SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 868

STATE OF OHIO, PUBLIC UTILITIES COMMISSION OF OHIO, THE WHEELING AND LAKE ERIE RAILWAY COMPANY ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE BALTIMORE AND OHIO RAILROAD COMPANY, ET AL.

No. 886

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL., APPELLANTS,

vs.

STATE OF OHIO, PUBLIC UTILITIES COMMISSION OF OHIO, THE WHEELING AND LAKE ERIE RAILWAY COMPANY, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

VOL. III

INDEX

		Original	Print
Testimony of K. V. Conrad		2692	1672
J. H. Bauer		2721	1688
J. E. Davenport	(recalled)	2722	1690
John Hewes, Jr.	(")	2791	1733
J. E. Teal		2822	1751
W. R. Triem	(recalled)	2838	1761
E. F. Saur	(")	2857	1773
Roy S. Kern	(")	2867	1779
E. F. Saur	(")	2873	1782
H. J. Adell	(")	2875	1783
C. B. Ackerman	(")	2880	1787

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 30, 1934.

	Original	Print
Verified statement of evidence on behalf of Wheeling and Lake Erie Ry. Co. et al. in reply to rebuttal evidence relating to Exhibit No. 146	2889	1792
Verified statement of evidence on behalf of Eastern Ohio Coal Operators' Ass'n et al. in lieu of surrebuttal	2922	1818
Verified statement of evidence on behalf of petitioning carriers in reply to memorandum filed by Wheeling and Lake Erie Ry. Co. et al.	2940	1832
Verified statement of evidence on behalf of petitioning carriers in reply to memorandum filed by Eastern Ohio Coal Producers' Ass'n et al.	2955	1841
Stipulation re statement of evidence	2962	1845
Petitioners' Exhibit No. 1—Proceedings before I. C. C., Docket No. 25566	2966	1847
Petition	2967	1848
Order opening proceeding, Oct. 3, 1932	2978	1855
Supplemental petition	2979	1857
Order for hearing, Oct. 28, 1932	2999	1863
Petition of Toledo Chamber of Commerce for leave to intervene	3001	1865
Order for hearing, Dec. 7, 1932	3011	1871
Petition for modification and clarification of Commission's orders	3013	1873
Order denying petition that issues be broadened	3030	1885
Order sustaining ruling denying motion for postponement	3031	1885
Petitioners' Exhibit No. 2—Proceedings before I. C. C., Docket I. & S. No. 3801	3032	1886
Protest and application of W. & L. E. Ry. Co. for suspension of proposed rates	3034	1887
Protest and petition of certain carriers	3037	1889
Answer of P. & W. V. Ry. Co. to protest and petition of certain carriers	3042	1895
Protest and application of Eastern Ohio Coal Operators' Ass'n	3061	1909
Answer of P. & W. V. Ry. Co. to protest and petition of Eastern Ohio Coal Operators' Ass'n	3068	1913
Order for hearing, Sept. 8, 1932	3073	1916
Petition of Western Pennsylvania Coal Traffic Bureau for reconsideration and cancellation of order of suspension	3074	1917
Letter Sept. 17, 1932, Gutheim to I. C. C.	3082	1925
Petition of P. & W. V. Ry. Co. for reconsideration and vacation of order of suspension	3083	1926
Answer of protestant carriers to petitions for reconsideration, etc.	3099	1939
Order vacating suspension order, etc.	3103	1941
Transcript of hearing held Oct. 4, 1932	3104	1942

	Original	Print
Petitioners' Exhibit No. 3—Proceedings before I. C. C., I. & S. Docket No. 3833	3112	1946
Petition of Pe & W. V. Ry. Co. to suspend operation of increased rates	3114	1947
Protest of Leech Farm Coal Co.	3122	1954
Protest of North American Coal Corp.	3124	1955
Protest of Clyde E. Speer Coal Co., Inc.	3126	1958-A
Reply of W. & L. E. Ry. Co. to petition for suspension	3127	1959
Protest of Duquesne Coal & Coke Co.	3137	1966-A
Answer of certain carriers to petition for suspension	3139	1967
Petition of protest and prayer for order of suspension by Western Pennsylvania Coal Traffic Bureau	3144	1973
Order suspending operation of rates, etc.	3157	1984
Petitioners' Exhibit No. 4—Proceedings before I. C. C., Docket No. 25590	3158	1985
Complaint	3160	1987
Answer of Bessemer and Lake Erie Ry. Co. et al.	3173	1995
Answer of Northern Ohio Ry. Co.	3176	1996
Answer of Akron, Canton & Youngstown Ry. Co.	3177	1997
Answer of C., C., C. & St. L. Ry. Co. et al.	3178	1998
Joint answer of W. & L. E. Ry. Co. and L. & W. V. Ry. Co.	3179	1998
Answer of B. & O. R. R. Co.	3180	1999
Joint answer of Pennsylvania R. R. Co. et al.	3183	2002
Amended answer of C., C., C. & St. L. Ry. Co. et al.	3185	2005
Intervening petitions	3188	2008
Petitioners' Exhibit No. 5—Proceedings before I. C. C., Docket No. 25656	3195	2012
Complaint	3197	2014
Answer of Bessemer and Lake Erie R. R. Co.	3206	2017
Answer of Northern Ohio Ry. Co.	3209	2018
Answer of A., C. & Y. Ry. Co.	3210	2019
Answer of Erie R. R. Co.	3211	2020
Joint answer of W. & L. E. Ry. Co. and L. & W. V. Ry. Co.	3212	2021
Joint answer of Monongahela Ry. Co. et al.	3214	2022
Answer of B. & O. R. R. Co.	3215	2024
Intervening petitions	3217	2025
Petitioners' Exhibit No. 6—Proceedings before I. C. C., Docket No. 25657	3241	2035
Complaint	3242	2036
Answer of A., C. & Y. Ry. Co.	3247	2041
Answer of Erie R. R. Co.	3248	2042
Joint answer of W. & L. E. Ry. Co. and L. & W. V. Ry. Co.	3249	2043
Joint answer of B. & O. R. R. Co. et al.	3251	2044

	Original	Print
Petitioners' Exhibit No. 7—Proceedings before I. C. C., Docket No. 25670	3253	2046
Complaint	3255	2047
Answer of Bessemer and Lake Erie R. R. Co.	3271	2057
Answer of B. & O. R. R. Co.	3274	2058
Joint answer of W. & L. E. Ry. Co. and L. & W. V. Ry. Co.	3277	2061
Answer of Northern Ohio Ry. Co.	3279	2062
Answer of A., C. & Y. Ry. Co.	3280	2063
Joint answer of Monongahela Ry. Co. et al.	3281	2064
Petitioners' Exhibit No. 8—Proceedings before I. C. C., Docket No. 25885 (omitted in printing)	3283	

[fol. 2604] River), and 12.41 per cent to destinations in North Dakota. Further, that 10,150 of the total number of 10,807 cars hauled were transported over one line; whereas, 657 cars out of that total, or 6.08 per cent were hauled over two or more lines.

It is interesting to observe, also, that 4,257 cars out of the total of 10,807 cars, or 39.39 per cent of the total, were transported from Duluth or Superior to Minneapolis or St. Paul. The shortest line rate making distance from Duluth or Superior to the Twin Cities falls within the block 150 (2892) miles over 140 miles, fixed by the Holmes & Hallowell scale.

It is noteworthy that this exhibit shows a total of 8,510 cars of coal out of the total of 10,807 cars, or 78.74 per cent of the total hauled at rates fixed by the Holmes & Hallowell scale for a distance of 300 miles or under. The percentage of coal which was shipped to destinations where the 300 to 400 mile zone rate applied was 15.56 per cent, while the percentage of coal reaching 400 to 500 mile zone rate destinations was 5.30 per cent and only 0.40 per cent of the total shipments reached destinations over the 500 mile zone rate.

The operating committee of which I was a member made a study for the purpose of developing the facts in connection with assembling of equipment for use in hauling bituminous coal from Duluth or Superior to destinations to which rates fixed by the Holmes & Hallowell scale [fol. 2605] apply. There can be no doubt that the assembling of such equipment is not difficult from an operating standpoint. At the head of the lakes the coal docks are commonly adjacent to the grain elevators, at which a large percentage of the equipment used for coal is made empty. Most of the cars used for hauling bituminous coal from Duluth or Superior are box cars. There are 36 grain elevators at those two points with storage capacity of (2893) 43,000,950 bushels. A tremendous number of box cars are received at these grain elevators under load with grain and when unloaded are available for use in connection with outbound hauls of bituminous coal. The Commission in its decision in the Bedford Pulp & Paper Company case, 163 I. C. C. 675, used the following lan-

guage in referring to types of equipment used for loading bituminous coal at the head of the lakes:

"The reports in the Holmes & Hallowell cases indicate that transportation conditions from the head of the lakes to the Twin Cities were favorable and that the movement to some extent furnished lading for box cars unloaded at the lake ports which would otherwise have moved empty outbound, whereas, it is well known that as to traffic from mines the return empty movement is a large percentage of the loaded movement."

Our investigation shows that what the Commission said in its decision in that case is substantially representative of the situation at the present time. The records of the [fol. 2606] Great Northern, one of the roads hauling a substantial percentage, namely, from 20 to 25 per cent, of bituminous coal moving under the Holmes & Hallowell scale from Duluth or Superior were checked and it was found that during the year 1929, 67.7 per cent of the loads of bituminous coal transported by the road from the head of the lakes moved in box cars, and 32.3 per cent in open cars. The total number of (2894) cars of bituminous coal hauled by that road during the period indicated was 73,434, of which 49,767 cars were box cars and 23,667 cars were open cars. During the five months August to December, 1929, the Northern Pacific switched 8854 box cars from grain elevators to coal docks, almost 100 per cent of which were loaded with bituminous coal.

It was necessary only to switch these box cars from the elevators to the coal docks at the head of the piers, a very short distance.

This practice of utilizing box cars received inbound under load with grain at Duluth or Superior for outbound shipments of bituminous coal from those points is a very decided advantage to the carriers reaching those bituminous coal origin points, both with respect to reducing their empty car mileage and to lessening of classification and other handling of cars utilized for transporting the coal.

A large number of cars suitable for use in transporting bituminous coal from the head of the lakes are made [fol. 2607] empty at Minneapolis and St. Paul, which are only about 150 miles distant from Duluth and Superior.

I have a statement for introduction as an exhibit showing daily average figures representing loaded and empty car movement in and out of Duluth and Superior during the year 1929 and the per cent of coal to total loads handled during the same period. This exhibit is based on information secured (2895) from the records of the five roads that reach Duluth and Superior. That will be Exhibit No. 405.

(Exhibit No. 405, Witness Davenport, received in evidence).

Of the inbound cars, 53.4 per cent were loads and 46.6 empties. Of the outbound cars, 80.1 were loads and 19.9 per cent were empties. Coal of all kinds represented 62.7 per cent of the outbound loads.

Particular attention is directed to the figure of 53.4 per cent representing the percentage of loads to the total inbound cars. Those loads moved in the direction of the coal docks where return loads of bituminous coal are available at Duluth and Superior.

Somewhere on Exhibit No. 405 I think is the word "daily." It is the daily average cars inbound and outbound.

As I have testified, there are 22 coal docks at Duluth and Superior. All those docks are equipped with track scales. (2896) On the Duluth side there are 13 track scales. On the Superior side there are 23 track scales. [fol. 2608] These 36 track scales are owned and maintained, all except 3, by the dock companies, and the railroads are put to no expense in connection with their ownership or maintenance. The 3 excepted track scales are owned by the railroads. All the track scales, including the three owned by the railroads, are manned by dock company employees. The weighing is supervised by employees of the Western Weighing and Inspection Bureau, which employs one man at Duluth and another man at Superior to make periodical visits to the docks.

In comparison, the carriers in the Ohio bituminous fields must own, maintain and operate at their own expense the necessary scales. The records of the New York Central show that track scales used in weighing bituminous coal on this road cost from $40,000 to $50,000 each. The carrying and operating charges on sums invested by the car-

riers in track scales used for weighing bituminous coal are very substantial, particularly when maintenance expenses and the wages of employees involved in this service are taken into consideration.

The Commission in its decision in the Holmes & Hallowell (2897) cases had the following to say with respect to the line haul operations from the head of the lakes (60 I. C. C. 698):

"Transportation conditions from the head of the lakes to the Twin Cities is said to be ideal, and no material evidence was introduced tending to show that there were [fol. 2609] any unusual or difficult conditions encountered in connection with any of the transportation here involved."

The operating committee, of which I was a member, had access to the records, including the profiles of the five roads that haul bituminous coal from the head of the lakes, covering their operating conditions. A review of those records makes it clear that line haul operations from the head of the lakes to destinations to which bituminous coal is hauled are not unusual or difficult. Some grades are encountered during the first 30 miles of the haul from Duluth or Superior but after that section of the routes of the carriers has been traversed, the balance of the territory to the Twin Cities and west thereof does not present any particular operating difficulties.

Under all the circumstances, disclosed by our investigation, there is no doubt that the findings of the Commission in the Holmes & Hallowell cases, in regard to operating conditions encountered by the carriers operating from the head of the lakes under the scale fixed by the Commission in those cases were representative of the operating conditions, when (2898) the committee made its investigation two years ago, and undoubtedly are the same today.

All of the principal petitioners delegated representatives to act on the committee organized to consider Mr. Ackerman's testimony pertaining to tonnage ratings and tractive effort in this case and to prepare rebuttal evidence for use in these proceedings, and I was selected to [fol. 2610] present the result of their joint conclusions. This was done in an effort to minimize time in presentation and also in the effort to present the matter in a more orderly manner. The operating witnesses from each of

the principal petitioners will follow me and make such comments upon Mr. Ackerman's testimony as are more or less particularly applicable to their respective situations.

I was a witness in Docket 23430, Central Pennsylvania Coal Producers' Association, which involved an attack upon the eastbound bituminous coal rate adjustment, and in that proceeding Mr. Ackerman also testified and introduced various charts showing locomotive performance under his theory. I was also selected in that proceeding to speak for the principal defendants and to present objections to and (2899) criticisms of Ackerman's theory of comparing relative operating and transportation conditions by means of the unit selected by him, that is, "tractive power required to haul one gross ton."

In connection with preparation of rebuttal testimony, I and other members of the committee reviewed Mr. Ackerman's testimony in other cases as well as the charts and diagrams presented by him in such other cases. We examined some of Ackerman's testimony and exhibits in Docket 21838, West Kentucky Coal Bureau; Docket 23240, Lake Cargo Coal Cases, 1930; Docket 23430, Central Pennsylvania Coal Producers' Association; Docket 23130, Intrastate Rates in Illinois, where Mr. Ackerman principally represented the Chamber of Commerce of Dixon, Illinois, and certain industries located at that point, and Docket 23922, Coal Trade Association of Indiana, in which Mr. Ackerman represented the complainants in Siemer Mill-[fol. 2611] ing Co., et al., Docket 23922 Sub. No. 1, and also parties located at Decatur, Illinois. In the last mentioned case Mr. Ackerman compared, according to his formula, transportation conditions from the Brazil-Clinton and Linton-Sullivan groups to Paris, Charleston, Urbana and Champaign, and other Illinois points.

(2900) In all of these cases Ackerman has followed the general plan of introducing so-called locomotive performance charts showing tonnage ratings, tractive power, etc., on various routes, which he claimed to have procured from railroad sources or as a result of personal investigation. In most of these cases the railroads, in addition to criticising Ackerman's theory, have pointed out numerous errors and inaccuracies, and it has been a part of Mr. Ackerman's plan to take this information and use it as a basis for correcting his exhibits. As indicated by his

testimony in this case, he claims to have brought this character of data down to date and to have correctly shown the facts on the several railroads involved with respect to tonnage ratings and tractive effort. By following this practice he is able to hold himself out as testifying in the public interest on the basis of current information with respect to these subjects. The fact is that such a library of carrier information is bound to be full of errors and inaccuracies, and can only be kept up to date by the carriers themselves furnishing information with respect to changes in operating conditions, tonnage [fol. 2612] ratings, etc. That Mr. Ackerman's information which he claims has been brought down to date is far from being correct or accurate will be later shown in my testimony.

(2901) In respect to the use of the so-called Ackerman theory of tractive effort, in each of the above cases the carriers have protested against and have entirely discredited the use of tractive effort comparisons, taken alone or as a reliable index of relative transportation and operating conditions. The erroneous mathematics employed in connection with Ackerman's theory was particularly emphasized in the Central Pennsylvania Coal Producers' Association Case, Docket 23430, in Exhibit 963 at page 2410 of the record, and this will be referred to by me in some detail.

In the Lake Cargo Cases, 1930, and in the Central Pennsylvania Coal Producers' Association Case, Docket 23430, the carriers, after discrediting Ackerman's theory as applied to actual conditions or actual performances, went further and offered studies which applied the Ackerman theory to actual performance of the carriers, and in addition made new studies, adding other elements, including the time element, to the tractive effort figures.

In the present proceedings Ackerman's exhibits cover a (2902) tremendously wide territory, including routes of movement from all of the Ohio fields, from all of the Crescent districts and from various Indiana-Illinois groups to numerous destinations. An examination of these ex- [fol. 2613] hibits discloses so many errors and inaccuracies that the committee was forced to the conclusion that these exhibits were really not intended to be final, but that Mr. Ackerman was simply "shelling the woods" and ex-

pecting the carriers to correct all of his data so that he could then bring the exhibits down to date. After this examination of Ackerman's exhibits the committee reached the further conclusion that, considering what little attention had been paid to such comparisons by the Commission in former cases as there indicated by what was said in the reports or by a failure to make any comments whatsoever, and considering further the tremendous amount of time and labor and money that would be required to make a complete check and re-cast of Ackerman's exhibits as applied to actual performance, as had been previously done, the Ackerman theory was not sufficiently important to justify any such procedure.

Anticipating the fact that Mr. Ackerman was going to be used as a witness in these proceedings, and with the idea of giving the Commission some reasonable information with respect to actual operating conditions, including tonnage ratings, it will be recalled that in the direct testimony in (2903) this case the principal petitioning carriers operating in Ohio have described, through competent operating officials, the routes over which coal involved in these proceedings moves, together with statements as to tonnage ratings over illustrative routes at present in effect and used in the actual transportation of coal.

[fol. 2614] It will be noted that, notwithstanding this testimony, the Ackerman locomotive performance charts subsequently introduced were not corrected to conform thereto.

For example, Mr. Triem testified with reference to the route from Ohio No. 8 to Cleveland that a single train with standard 10-wheel engine contains 3,500 gross tons (R. 388), involving the use of a helper engine from Yellow Creek to Summitville, whereas Mr. Ackerman's Exhibit 257, page 3, first line, introduced after Mr. Triem testified, shows the tonnage rating of 7,218 tons to Yellow Creek, and the second and third lines coupled with the last line of the third group on page 2 shows the tonnage rating of 6308 tons from Yellow Creek to Cleveland. Mr. Triem's definition of a 10-wheel engine is the same as carried in Mr. Ackerman's Exhibit 325 on the Pennsylvania class I-1 as 2-10-0.

Again, Mr. Hewes, testifying for the B. & O. at record 422, describing the movement from Ohio No. 8, stated that the road haul between Bridgeport and Halloway, under ordinary conditions, is accomplished with a single engine

handling (2904) 6,300 tons; with the assistance of a helper from Bridgeport to Flushing, a distance of 25.8 miles, there can be 9,450 tons with what is called a Mikado helper, or 10,000 tons with what is termed a Mallet helper.

Again, Mr. Hewes, testifying for the B. & O., record 426, referring to movement from Fairmont to Cleveland, says, "From Lumberport to Hartzell, a distance of 13.7 miles, [fol. 2615] tonnage handled with assistance of a single helper, 10,000 *pounds*, from Hartzell to Benwood Junction, likewise a rating of 10,000 tons, with a single engine, while Mr. Ackerman on Exhibit 313, through all of this territory shows a rating of 8,900 tons as a single engine rating with the helper in the territory between Lumberport and Hartzell of 14 miles.

Again, it is to be noted that Mr. Heinish testified at page 456 of the record with respect to the route of the N. Y. C. from Ohio No. 8 to Cleveland, and said that between Minerva, Ohio, and Cleveland the practice is to use standard power and the engine rating calls for 3,600 tons; also that these trains are assisted approximately 50 per cent of the distance with a large engine to Hugo, the approximate double-header rating being 6,700 tons; while on Exhibit 258 Witness Ackerman shows tonnage rating from Minerva to Marcy of 7,500 tons, with a helper from Minerva to Brady Lake, which is the same helper district referred to by Witness Heinish.

(2905) The effort of the committee was therefore confined to a criticism of Ackerman's theory and of its lack of application to actual conditions, to be supported by positive testimony that his locomotive charts do not correctly reflect individual or average conditions on different parts of the same railroad or on different railroads. It is their opinion that the final figures derived by Ackerman are of no value whatsoever in comparing burdens of transportation or relative operating conditions, and should be totally disregarded by the Commission.

[fol. 2616] In ordinary railroad practice, train ratings are not used as a means of measuring relative operating performance. The New York Central does not use train ratings for any such purpose, and I have never heard of any such practice by any other railroad.

In my experience as a practical operating man, I would say the following statement of Mr. Ackerman at page 1648

of the record is not correct: the "tonnage rating" of a locomotive takes into account "all factors with which the operating department is confronted in the movement of trains." (2906) For example, tonnage rating does not reflect grades unless it is coupled with the tractive effort of the engine.

Referring to the following statement of Mr. Ackerman at page 1652 of the record: "The size of the trains or the tonnage ratings of the trains is, of course, dependent, among other things, upon the tractive power of the locomotive which hauls that tonnage, and railroads in their ordinary practice endeavor to get the maximum efficiency out of the amount of the tractive effort available to haul traffic. This is reflected in the type of power assigned to each train rating district in actual practice. The formula which combines the train rating and the tractive effort of the locomotives used therefore reflects all of the conditions encountered in actual operations." The Ackerman formula, in my opinion as a practical operating man, does not reflect "all of the conditions encountered in actual operations," for the reasons [fol. 2617] which I will now give. The operating committee for whom I speak is of the opinion that the theory employed by Mr. Ackerman is not a proper theory by which to measure the operating conditions as between two parallel or competitive routes or as between routes serving several origin coal territories and the respective destination territories corresponding thereto.

The most obvious defect of the Ackerman theory of tractive effort as applied to line-haul (2907) performance is its failure to take into consideration any transportation conditions other than the line haul. By this I mean to say that the Ackerman theory, as we understand it, fails to reflect the burden of assembly service, interchange service and delivery service at destination.

It will, of course, be admitted that assembly service is an important factor in connection with the transportation of bituminous coal, and must be taken into account in comparing difficulties of operation.

Moreover, the difficulty of assembly service is a varying element, and one which differs between different carriers in the same coal origin district and even in different origin fields on the same carrier.

This hardly requires illustration. Coal mining producing

districts are located in territories whose topography can be described as from rough and hilly to very mountainous terrain. The coal field, depending upon its age and size and depending upon the territory involved into which its coal flows has a very emphatic bearing upon the railroad develop-
[fol. 2618] ment required to serve the particular field involved. Among the most important elements of difference are the differences in distance from mines to assembly yards. This is well illustrated by the conditions incident to the assembly of coal (2908) in the Ohio No. 8 fields. Witness Durham's Exhibit 146 shows that the average distance from the mines to assembly yards in the Ohio No. 8 District is 4.4 miles. This figure includes the figures for the mines shown on Exhibit No. 390, which was recently introduced, as I understand it, by Witness Durham. 4.4 is your (W. & L. E.) average distance.

On the New York Central in the Ohio No. 8 field, which is the same field referred to in Exhibit 146, the average distance from the mines to Minerva, which is the assembly yard for the Ohio No. 8 field, is 43.4 miles. The distance from the mines on the Pennsylvania Railroad to assembly points in the Ohio No. 8 district is 18.1 miles. These figures indicate that the burden of the movement in assembling bituminous coal in the Ohio No. 8 field to place same in position for road haul movement on the New York Central is approximately 10 times the distance involved in similar movement on the Wheeling and Lake Erie, and on the Pennsylvania Railroad approximately four times.

Among other things that bring about differences in the burden of assembly service are differences in individual mine production, the difference between the location of the (2909) mine with respect to the main, branch line or spur [fol. 2619] tracks, the difference of grade and curvature involved, which are the result of the particular terrain in which the mines are located; the difference in the class of power which is used by carriers in different mine territories; and, as I have before stated, the difference in the distances in the movement of the car from and to assembly points and the mines.

To further illustrate the difference in assembly operation I need only refer to the fact that from various districts it almost invariably occurs that the net tons shipped, the locomotive hours, the average miles per net ton to the assembly

yard, the net tons shipped per locomotive hour and the average tons per mine shipping will vary in different origin districts.

The burden of transportation incident to the distribution of coal varies with different destinations. For example, the distribution of coal to final destinations at Cleveland, as illustrated in this record, varies to a large extent as compared with the burden of distribution at Charleston, Illinois.

The burden of interchange between carriers is one which varies widely. The burden is proportionately greater where interchanges are made between carriers in the larger cities due to the fact that the property involved over which the interchange is made necessarily is expensive and carries with (2910) it all of the burdens of maintaining expensive property as well as adding to the difficulties of operation [fol. 2620] by reason of grade crossings and municipal regulations under which it is necessary to operate in congested communities. In this connection I desire to point out that the entire burden of interchange is not confined to the physical operations in interchange between yards and different carriers, because it is necessary for such carriers to make exchange interchange reports, which require considerable clerical work. These reports carry information as to the car initial, car number, the loading, delivering and receiving, and the time of movement, etc., and in addition to the clerical work necessary to complete this interchange the actual inspection of the cars involved must be made by the receiving carrier, for the purpose of protecting each carrier in connection with the actual condition of the car and loading involved in the movement.

Ackerman's theory of locomotive performance or tractive effort does not take into consideration any of the three services—assembly service, interchange service or delivery service. As I have already pointed out that, while assembly service, interchange service and destination service is burdensome and large, the final figures (2911) derived by the Ackerman theory do not take into consideration to any extent any of these burdens. Any theory which does not afford a basis of comparison of the relative burdens of transportation involved in the important elements of service which I [fol. 2621] have just referred to can not possibly truly reflect the relative burdens of transportation.

I have attempted to summarize what I believe to be funda-

mental defects in the Ackerman theory of locomotive performance, insofar as it purports to reflect differences in operating and transportation conditions. What I am about to say represents the considered judgment of the operating committee for whom I speak, and it is the view of this committee that the Ackerman theory is defective, and that it wholly fails to reflect relative operating or transportation conditions, for the following reasons, among others:

(1) The final figures shown on the Ackerman exhibits are arrived at by erroneous mathematical computations.

(2) The Ackerman theory compares performance upon the basis that traffic is being offered in such volume as to permit the utilization of full tonnage ratings on all engine districts.

(3) The Ackerman theory rests upon the assumption that (2912) the movement of coal is in solid coal trains.

(4) The Ackerman theory makes no allowance for the additional burden of multiple-line operation as compared with single-line operation.

(5) The Ackerman theory does not take into consideration the relative burdens of transportation insofar as they are affected by the diffusion of coal traffic, whether such diffusion occurs by reason of several assembly points or by rea- [fol. 2622] son of several destination points being included in the route of movement shown by his respective charts.

(6) The Ackerman theory completely ignores the importance of the time element in comparing transportation burdens. Time is a measure of work done.

(7) The Ackerman theory adopts tractive power as the unit of comparison. Tractive power as used by Mr. Ackerman is not the unit actually used nor the proper characterization of the force or energy which is actually used in hauling a train load of bituminous coal.

(8) Under the Ackerman theory tractive power is apparently constant. The fact is to the contrary. Tractive power, as well as drawbar pull, varies as to speed and grade in a variable ratio under different locomotive designs.

(9) The Ackerman theory of tractive power does not reflect differences in the amount of service required by engine

or train crews. Such differences in service bear no (2913) direct relation to tonnage ratings or tractive effort.

(10) The Ackerman theory of tractive power does not reflect the burden of the maintenance of way nor of the burden of the maintenance of equipment, particularly as applied to the maintenance of the rolling stock in which the bituminous coal is moved. Such burdens are not directly related to either tonnage ratings or tractive effort.

(11) Under the Ackerman theory gross tons in train are not directly related to energy expended in moving a given number of gross tons.

[fol. 2623] (12) The Ackerman theory of tractive power only partially reflects the size of locomotives.

(13) The Ackerman theory does not reflect density of traffic.

(14) The Ackerman theory does not reflect the burden imposed upon the carriers to house and prepare locomotives for their operations; in fact, it does not take into consideration the amount of engine service necessary to move a given class or volume of traffic.

(15) The Ackerman theory does not reflect the burden of transportation involved in depreciation and retirement of equipment.

(16) The Ackerman theory of tractive power does not reflect the efficiency of locomotive operation; that is, the amount of engine service necessary to most economically move (2914) a given class or volume of traffic between any given destinations. In other words, it does not reflect the efficiency of individual train operation.

(17) The Ackerman theory of tractive power does not reflect the relative burdens of transportation on different railroads in proportion to the amounts expended in improvements, such as installation of large tanks, automatic stokers, coal pushers, etc.

(18) The Ackerman theory of tractive power does not reflect the relative burdens of transportation on different lines of railroad or on different parts of the same railroad involved in the returning of empty cars to coal mines. It [fol. 2624] has already been pointed out that the relative

differences in the burden of transportation involved in assembling cars from the mines is not reflected by Ackerman's theory. The same is true as to the return of empty cars to the mines, not only from the assembly yards, but also in the return of empty equipment from the destination points to the assembly yards.

(19) The Ackerman theory of tractive power does not, in any sense, reflect competitive conditions, insofar as they may require changes in amounts of tonnage hauled while tonnage ratings may remain the same.

(20) The Ackerman theory does not reflect relative property investments made by different carriers.

(2915) (21) The Ackerman theory does not reflect the burden of weather conditions as imposed upon different carriers operating from different fields.

In all of Witness Ackerman's exhibits the mathematical formula that he has used in arriving at the average tractive power required to haul one gross ton from an assembly yard to a destination is erroneous. In his application of mathematics the witness has developed for each group involved the product of the mileage of movement and the tonnage rating of the locomotive for the separate tonnage rating or locomotive districts of the route and from this product, by dividing it by the total miles of movement, he has produced, as shown on exhibit 324 under Item H, a figure which he calls "tractive power of locomotives one [fol. 2625] mile per mile of road" which figure is clearly the tractive power of the average locomotive which the witness purports would handle trains involved. His second computation consists of securing the product of distances of movement and the tonnage ratings of the locomotives involved and dividing the total of such products by a distance of movement thus secured, as shown under Item G, Exhibit 324, an item which he terms "average number of gross tons hauled one mile per mile of road." By these (2916) two calculations the witness has developed two averages, one purporting to show the tractive power of the locomotive and the other purporting to show the tons hauled by the locomotive and he next proceeds to secure his final answer, that is, the average "tons of tractive power required to haul one gross ton one mile per mile of road" by

dividing the average tractive power of locomotive by the average gross tons per train which that locomotive hauls and in thus dividing the average by an average he has arrived at a conclusion which is purely fallacious.

This fundamental error reduces the effect of the grades and produces a much lower final figure. This may be illustrated by the following example: 1,000,000 tons (car and lading) are assumed hauled from point A through point B and to point C. The distance from A to B is 50 miles, from B to C 100 miles, making a total of 150 miles, the locomotive tractive effort is 100,000 pounds hauling 2,000 tons over a steep grade from A to B and 10,000 tons over a lighter [fol. 2626] grade from B to C. That is for the same locomotive.

Following the witness' method of arriving at his averages he would develop from A to B 50 tractive power pounds per gross ton and from B to C 10 tractive power pounds per gross ton and reach the figure over the route from A to C of 13.64 (2917) tractive power pounds per gross ton. This computation is erroneous because the figures for each district are weighed on the average load for that district which average train load is 5 times as great on the district from B to C as on the district from A to B, but in view of the assumption that the same tonnage moved over the same district it will require 5 times as many trains on the district A to B as from B to C. Therefore the tractive power pound miles and the gross ton miles used in the example covering district from A to B should be increased 5 times to arrive at the correct ratio of 23.33 pounds instead of 13.64 pounds as determined by Ackerman's method. The proper method of determining the average tractive power per gross ton for a given train passing over several districts is as follows: Multiply the length of each district by number of pounds of tractive power per gross ton for that district, add the products, and divide by the total distance. Witness Ackerman did not use this method in reaching any of the final calculations shown in any of his exhibits, purporting to develop the tractive power pounds necessary to haul one gross ton.
[fol. 2627] As an example of the difference in method of calculation, please refer to Exhibit 330, which purports to show a statement of locomotive performance from Southern West Virginia, (southern low volatile fields), etc., to Cleve-

land. Mr. Ackerman derives a figure of 13.84 average pounds of tractive (2918) power to haul one gross ton one mile, whereas making these computations upon the basis above outlined, as corrected, the figure should be 18.5 pounds, or a difference of 34 per cent as compared with Witness Ackerman's method.

To the extent that Ackerman's exhibits are based upon traffic being offered in such volume to permit utilization of full tonnage ratings, they are theoretical and not actual. This is necessarily so in view of the fact in each of the tonnage rating districts involved, Witness Ackerman has shown what purports to be a maximum tonnage rating for that district regardless of whether or not business is offered to the carriers in such volume as to be able to handle that tonnage. As an example please refer to exhibit 255, which is a Wheeling & Lake Erie operation from Ohio No. 8 coal group to northeastern Ohio destinations. That portion of the exhibit dealing with Cleveland destination direct indicates a tonnage rating of 3,500 tons Dillonvale to Rexford, 7,020 tons from Rexford to Brewster, 3,810 tons from Brewster to Canton, 5,385 tons from Canton to Kent and 6,445 tons from Kent to Cleveland. Witness Durham in [fol. 2628] his cross examination, page 2074, states that there is not always tonnage available at Canton for filling out ratings carried on Exhibit 255 and in similar manner makes same statement in connection with situation at Kent, where there is a further (2919) increase of tonnage ratings on Exhibit 255. Moreover, the Wheeling & Lake Erie cost study (Exhibit No. 146), which shows selected trains only, with selection being made on basis of hauling the maximum amount of tonnage per train illustrates this point. When I speak of that study I mean Mr. Durham's study, Exhibit No. 146.

The 162 selected trains in this study average 2,540 gross tons per train mile. These calculations are based upon through movement of each of the cars involved from Pine Valley to Jewett, which from a practical standpoint was the operation according to the witness, and using the section of the exhibit covering puller movement the average tons per train mile would be 2,483. In other words, in this territory where the coal movement is maximum and where the trains involved contain 99% coal, according to the witness, the train load of these selected trains was approxi-

mately 72½% of the ratings shown by Witness Ackerman. From Jewett to Brewster, which is equivalent to territory from Rexford to Brewster, with a tonnage rating of 7,020 tons, the tonnage of the 162 selected trains was approximately 5,023 tons, or 71½% of the loading order for that [fol. 2629] territory. The tonnage ratings shown from Brewster to Canton on Exhibit 255 are broken in three pieces as above outlined, the smallest of which is 3,810 tons from Brewster to Canton. However, on 242 selected trains of which (2920) 51% of the cars were coal the average tonnage per mile for the trip from Brewster to Cleveland was 2,657, which is 69½% of the tonnage rating from Brewster to Canton, 49% of the tonnage rating from Canton to Kent and 41% of the tonnage rating from Kent to Cleveland. These figures apparently indicate that based upon actual performances of selected trains operated between Pine Valley, or Dillonvale to Cleveland, in territory from Dillonvale to Rexford the average pounds of tractive power per ton should be 35.3 pounds for a distance of 15 miles instead of 25.25 pounds, from Rexford to Brewster actual performance produces 17.7 pounds in lieu of the 12.59 pounds shown for the distance of 48.7 miles, and from Brewster to Canton actual performance 33.2 pounds as against 23.19 for the distance of 15.6 miles, and this same figure of 33.2 pounds would apply likewise between Canton and Kent in lieu of 16.41 and between Kent and Cleveland in lieu of 13.71 pounds. Following through these calculations by what we believe to be the correct mathematical process we arrive at a figure of 28.43 pounds of tractive power per ton, as that which would be produced by actual operation and as that which represents the burden of transportation to the Wheeling & Lake Erie as measured by the [fol. 2630] use of the Ackerman formula, in lieu of the figure of 15.39 pounds as set out by Witness Ackerman in his Exhibit No. 255.

By Mr. Ballard:

(2921) It is true that that result represents two changes from Mr. Ackerman's computation: In the first place, I use actual tons instead of train ratings, and in the second place, I use the mathematical process explained by me in connec-

tion with my hypothetical train from A through B to C, instead of the mathematical process used by Mr. Ackerman.

By Mr. Day:

Referring to my statement that Ackerman's theory did not reflect the relative burden of single line and multiple line operation, I have some comments to make upon Ackerman's exhibits in this connection. A study of Exhibits 255, 256, 257, and 258, covering Ohio No. 8 and Cambridge originating coal fields, shows that Witness Ackerman has used 20 single-line routes to the eight destinations and 35 multiple line routes to those same destinations. Of the 35 multiple line routes 30 are two-line routes, five are three-line routes and one a four-line route. Exhibits 259, 260, 261, 262, 263, 264 and 265 carry a total of 15 separate destinations, and Witness Ackerman has shown on these exhibits 54 single-line routes and 53 multiple line routes to those 15 destinations. Of the 53 multiple line routes 45 are two-line routes, 7 are three-line routes and one is a four-line route.

Two-line routes require one interchange, three-line [fol. 2631] routes require two interchanges and four-line routes require three (2922) interchanges in the handling of traffic.

From the above figures, it is noted that, insofar as the Ohio origins and destinations are concerned, Witness Ackerman has selected 4.4 multiple line routes per destination, and in his selection of the Indiana and Illinois origins and destinations he has selected only 3.5 multiple line routes per destination.

Under Ackerman's method of weighing the burdensomeness of transportation in the Ohio No. 8 field to Cleveland he would get the same answer for coal destined to the numerous industrial plants at Cleveland as he would for a solid train load of coal moving to Cleveland for trans-shipment by water through one loading machine.

In connection with one of my criticisms of the Ackerman theory, that is, that it failed to reflect the element of time and the extent to which the relative burdens of transportation depended upon this element, I should like to refer to the decision of the Commission in Docket 23653, Staunton Brick Co. v. The Chesapeake & Ohio Railway Co.,

decided December 19, 1932, sheet 24, where, referring to the Ackerman theory of tractive power, as applied by the carriers to a test period (2923) of actual performance, the Commission said:

"The first comparative unit is a measure of the average amount of tractive power of locomotives required in moving one gross ton one mile. It partially reflects curves, grades, [fol. 2632] and other operating conditions. It does not take into consideration the time element which has an important bearing on operating efficiency or other elements. It is not generally regarded by carriers as a reliable basis of comparison."

Even as applied to actual performance it will be noted that the Commission said that the unit of tractive power only partially reflects curves, grades and other operating conditions. This statement was made by the Commission in a case where the carriers also put in evidence average gross ton miles per 1000 tractive power pound hours on the basis of a one gross ton unit over each district described in their studies, and this study included the element of time as bearing upon relative transportation conditions and performance.

As I have previously stated, the Ackerman theory completely ignores the time element. He has indicated in his testimony that by using maximum tonnage ratings as a factor in his computations he thinks he has taken into account the time element. In this I believe him to have fallen into serious error. The time element does not enter into the fixing of (2924) the maximum tonnage ratings of locomotives on the New York Central Lines. I personally know this to be a fact, because I have established maximum ratings for locomotives in at least 25 districts on various New York Central lines, and in no instance was the time ele- [fol. 2633] ment taken into account.

Tractive power pounds per gross ton, a figure which is necessarily dependent upon tractive power pounds of the locomotive, cannot be used as a yardstick by which to define the energy exerted in actually hauling a train over routes of any two different roads. To illustrate, in the first place tractive power figures reflect only the power exerted by an engine in starting. The tractive power exerted by an engine while it is running at various speeds cannot be all utilized

in pulling a train, for the reason that the pull at the drawbar is in reality the pull communicated to the train beyond the engine and a substantial percentage of the tractive power generated by the locomotive is lost during transmission to the drawbar, for instance at zero speed tractive power of NYC type H-6 locomotive, which is shown on Witness Ackerman's Exhibit 265, is 54,720 pounds, whereas the drawbar pull exerted by that engine at zero speed on tangent level track at starting is 51,515 pounds. (2925) That is the H-6 type locomotive, and both figures are for zero speed.

In the second place both the tractive power and the drawbar pull of any particular type of steam locomotive vary according to the speed and grade over which it is operated, and the two items generally do not vary from the maximum in the same ratio at the same rate of speed.

There is absolutely no relationship between maintenance [fol. 2634] of way expenses and the tractive power of locomotives or the tonnage ratings applied to those locomotives. There is no relationship between that portion of the maintenance of equipment expense dealing with rolling stock and tractive power or tonnage ratings. Between that portion of the maintenance of equipment expense which is applied to locomotives the relationship to tractive power is faulty in view of the fact that tractive power does not rigidly reflect the locomotive size and there is a slight possible relationship between the size of a locomotive and the maintenance of that locomotive. However, this relationship is largely dependent upon the particular design of the locomotive in general and to the (2926) auxiliaries with which the locomotive is equipped in particular.

In connection with maintenance of equipment expense and locomotive maintenance as between classes, there is no relationship with tractive power on the New York Central. We have found it necessary, for example, due to high maintenance of compound Mallet locomotives, with a tractive effort of 63,030 pounds, to discontinue that type of locomotive, replacing same with simple Mikado type locomotives ranging in tractive power from 54,720 pounds to 78,190 pounds. Just exactly the opposite situation might be true on some other line. This is a New York Central condition.

The gross tons of trains are not directly related to the

[fol. 2635] energy expended in moving a given number of gross tons. Witness Ackerman has called this item to our attention in his Exhibits 256, 257, 258, 261, 264, 265 and in other exhibits where he has referred to tonnage ratings as an adjusted tonnage and indicating therewith adjustment factors known as "car factors." This adjustment factor is used by the carriers to equalize the well known relationship which exists between the resistance of haulage of cars and the gross actual weight of those cars. In other words, the carriers have for engine rating purposes developed methods (2927), one of which is known as the car factor method and is the method referred to in the above mentioned exhibits, so that we find it necessary to load two engines of the same class over the same railroad with the same type of train with different gross tonnages in order to equalize the difference in haulage as between those gross tonnages, depending upon the make-up of those tonnages from the standpoint of average gross weight of the cars in which the shipments are carried. I have personally had considerable experience in handling trains loaded to the same adjusted tonnage with different gross tonnages over the same route with the same locomotive and this experience has shown me that insofar as the transportation cost of wages and fuel are concerned these items relate more definitely to the gross adjusted tonnage of the particular train than to the gross actual tonnage of that train.

[fol. 2636] On his Exhibit 314 Witness Ackerman on the second page thereof refers to "equated or machine tonnage which is practically actual tonnage with all loads." This reference, also, is to this same item of adjusted tonnage, the machine tonnage to which he refers being simply another method by which locomotives are rated. However, his statement is in error insofar as it refers to the adjusted tonnage and the actual tonnage being equal for all loads. I personally designed the machine to which Mr. Ackerman refers and that machine is so designed (2928) that the only trains where the adjusted tonnage and the actual tonnage are the same are trains whose average weight of cars is 70 tons. The machines to which he refers as being in use at Dickinson and Hobson, and which machines have not been in use since October 1, 1931, will show a higher adjusted tonnage than actual tonnage for all trains whose average car weight is less than 70 tons and will show a

lower adjusted tonnage than actual tonnage for all trains whose average car weight is more than 70 tons.

The theory of Witness Ackerman does not reflect the measure of the work that is performed in moving bituminous coal. Tractive effort is not a measure of work performed in any sense in that it lacks the element of time to which I have referred previously. This element of time, of course, can be expressed in any unit where time is taken into account. By this I mean it can be expressed as the [fol. 2637] total hours involved over the locomotive's territory in making the run or it can be expressed as the average speed, which item, of course, includes the distance of the run and the time involved in that movement, and in view of the fact that the work done must take into consideration some element of time the theory based purely upon tractive effort is of no value as a measure of the work accomplished. The Ackerman theory does not reflect traffic density. The tonnage ratings shown on Witness Ackerman's (2929) various exhibits reflect, if correct, only the movement of an individual train over the line which he has chosen and cannot, therefore, have any bearing as to the number of such units which are moved between the various engine terminals, nor to the volume of the traffic per mile of line, nor as to the number of tracks over which such traffic can be handled, nor, generally, to any items to which can be attached any idea as to the traffic density involved. I know for a fact that the traffic density on some of the routes shown on Witness Ackerman's exhibits is many times in excess of the traffic density on other routes shown in his exhibits and I know, furthermore, that traffic density is an item which must be taken into consideration when attempting to weigh the burdensomeness of transportation.

The Ackerman theory does not reflect the amount of engine service necessary to move a given class or volume of traffic. The theory does not reflect engine service in [fol. 2638] that it gives no consideration, as mentioned formerly in my testimony, to the volume of traffic involved for movement or to the class of that traffic in view of the fact that the locomotive ratings shown are for individual movements. There can be no relationship drawn as to the volume of traffic over any of the routes selected and, in view of the diffusion of bituminous coal as it gets farther and farther from the mine originating districts, from

a practical standpoint, it is (2930) necessary to handle bituminous coal in trains with various other classes of traffic.

Ackerman's theory logically cannot reflect the depreciation and retirement of locomotives and cars and the depreciation and retirement of steam locomotives and cars are important items which must be carried in mind when weighing the burdensomeness of transportation as reflected in Witness Durham's Exhibit 146, page 7, Items B-6-c and B-7-b, the total of which items for the two years 1930 and 1931 on the Wheeling & Lake Erie amounted to $2,431,521.

Ackerman's theory does not reflect the efficiency of locomotive operation. As I have stated previously in my testimony, his theory ignores the element of time and in order to weigh the productivity of the locomotive, which is necessary in arriving at any figure which pertains to its efficiency, it is necessary that the time element be taken into consideration. Broadly speaking, the efficiency of a locomotive includes elements as to its first cost, and main- [fol. 2639] tenance and operation costs, on the one hand, and the output of that particular locomotive in car miles or gross ton miles, or some other unit indicating its productivity, on the other hand, and neither of the two units chosen by Witness Ackerman measuring the burdensomeness of transportation reflect these (2931) items which go [fol. 2640] to make up locomotive efficiency. In view of the fact that the operation of a division of a railroad and even the operation of an entire carrier is reflected from the efficiency standpoint in the individual efficiency of its locomotives, it follows that Witness Ackerman's theory does not reflect the efficiency of one carrier as compared with any other carrier.

Ackerman's theory does not reflect information as to water service, which is an expensive item of locomotive operation, and to this particular phase of locomotive operation can be attributed, I believe, at the present time a sizable proportion of the present efficiency of locomotive operation as compared with that of former years. I have particular reference to the action of many carriers, including the New York Central, in their activities toward applying to locomotives and carrying therefor larger locomotive tenders for the purpose of increasing the output of these

locomotives by eliminating burdensome, from the standpoint of time, water stops, and in using tractive power and tonnage ratings to measure the relative output of the two locomotives on the same or on different locomotive runs. The performance of those locomotives, when considering dollars and cents, would (2932) vary considerably were one equipped with a so-called large locomotive tender and the other equipped with a smaller tender. This difference in locomotive output carries, as well as the situation in regard to water, also the situation with regard to coal as it has [fol. 2641] been possible on many of the divisions of the New York Central to eliminate entirely, such expensive operations as way-side coaling stations, as well as the expense entailed in stopping trains to secure their coal supplies. In addition to larger locomotive tenders I might include in this category the application to locomotives of automatic stokers, coal pushers, automatic train stops, etc.

The returning of empty cars to coal mines is a burden of transportation, but Ackerman's theory does not reflect that burden. The movement of empty cars on the carriers lines is a very expensive burden in connection with their operation and Witness Ackerman has given no consideration to that burden in weighing the transportation burdens of carriers between the routes shown in his exhibits. Empty car mileage in connection with coal transported is extremely high, reaching in many instances the mileage made by that equipment moving (2933) under load. The return empty mileage of coal equipment is absolutely essential in order adequately to protect the outbound loaded movement from bituminous coal mines, and it is needless to say that there is no empty car mileage produced on the New York Central, or on any of the other carriers involved in these cases, which is not absolutely necessary in order to protect requirements. Operating officials are continually in touch with that situation and every effort is made to prevent the turning of any wheel [fol. 2642] which does not have to be turned in order to provide adequate and efficient service. On the larger carriers which serve several coal districts, such as the New York central, it is necessary to control the movement of empty coal cars through one operating head. It cannot be assumed that cars which are loaded with coal, for example, in the Ohio No. 8 District for Cleveland destinations, are

unloaded at Cleveland and returned empty to the Ohio No. 8 District. Due to the fluctuations which exist in the various mine origin territories it is often necessary, for example, to protect the loading in the Pittsburgh District with cars which are made empty at Cleveland, regardless of where those cars were formerly loaded. It is likewise necessary to shift the movement of empty cars back and forth between the various fields on our lines all the way from the Central Pennsylvania producing territory to the Illinois-Indiana territory.

(2934) Using a figure of 92 per cent empty car mileage, which resulted from the actual count of 1000 coal cars, and taking into consideration the draw bar pull necessary to move these cars on tangent level tracks when loaded and when empty, it follows in the complete movement per loaded and empty car 185.24 pounds of draw bar pull are required to overcome the resistance impressed by the tare weight of that car as against 159.8 pounds of draw bar pull required to overcome the resistance impressed by the revenue bearing weight in that car. The resistance figures [fol. 2643] which make up this calculation are 6.85 pounds per ton for the empty car and 2.92 pounds per ton for the loaded car which I have assumed as weighing 20 tons when empty and 75 tons when loaded.

It is necessary to expedite the movement of coal traffic. The operating officials who are involved in connection with the movement of coal between the mine origin territories and the destination territories are constantly being called upon by operators, shippers and receivers in connection with the matter of expediting movements of coal in various quantities. As between (2935) carriers the expedition with which coal traffic is moved has a definite bearing as to the route over which that traffic will move, and in this respect the result in competition is a burden in connection with the handling of this particular transportation. Answering the second part of your question, Ackerman's exhibits do not reflect the burden of competition. This burden develops from the fact that it is impossible to hold coal until complete train loads can be assembled or until tonnage rating of the locomotive can be assembled so that all over the territory which is shown on Witness Ackerman's exhibits it is necessary to move coal in trains the size of which is far below the tonnage rating of the locomotives involved

in that movement. This is a burden upon the transportation because of the fact that practically all the expenses in connection with the movement of that train would have [fol. 2644] to be distributed over a lesser number of tons than would be necessary were the official involved in a position to hold coal traffic until full tonnage rating trains were available. Witness Ackerman's exhibits reflect only full tonnage ratings of each train; whereas, the practice, as I have testified formerly as exemplified by the Wheeling & Lake Erie, makes it impossible to accumulate full tonnage trains from the various territories for movement in connection with individual trains.

On a great many of the engine rating divisions shown on (2936) Witness Ackerman's exhibits, particularly in connection with the New York Central's proportions of those exhibits, the movements involved are scheduled movements and it is necessary that these trains move on schedule in order to make connections with other scheduled movements at distant terminals and in order to make deliveries which are scheduled as to time and which are known to the receivers of the commodities, coal as well as other commodities, and which schedules are expected by the receivers to be made.

Capital expenditures are a burden of transportation. Ackerman's theory does not reflect such expenditures. It is evident that the interest to carry such expenditures must be borne by the revenues derived from transportation by the carrier involved. At the present time on the railways of this country, and on many of the routes which are shown in Witness Ackerman's exhibit, capital expenditures of [fol. 2645] various sizes have been made for the purpose of eliminating highway grade-crossings, for example, and the portion of the cost of such constructions which is borne by the carriers represents capital expenditures and to that extent the transportation of that carrier is burdened with that amount of interest.

Witness Ackerman's theory as to locomotive tractive power (2937) and tonnage rating would not be affected one way or the other by the elimination of highway grade-crossings and in that respect his theory does not reflect the burden of transportation with respect to capital expenditures of that nature and many other capital expenditures which could be cited.

The tonnage ratings which are carried in Witness Ackerman's exhibits are, if correct, the maximum tonnage ratings for the territories involved and, insofar as the New York Central is concerned, the movements from the Illinois-Indiana fields, the Kanawha fields, the Ohio No. 8 District fields, as well as movements in connection with the southern carriers and those in Cincinnati and Columbus Gateways, are all affected by weather conditions to the extent that at times it is necessary, due to severe climatic conditions, to reduce the tonnage which is actually hauled below that maximum tonnage rating if that rating is available for haulage. The amount of this reduction varies, of course, with the climatic conditions imposed upon the section of the line involved, it being necessary to leave the [fol. 2646] amount of the reduction more (2938) or less in the hands of the operating people, as it is sometimes necessary to readjust these tonnage ratings on quick notice, and I have seen instances where tonnage ratings would be changed several times during the 24-hour period. In this connection it is noted that the Wheeling & Lake Erie Time Table #14, page 11, carries ratings of various classes of locomotives with the notation: "The rating shown above for the different classes of engines can be hauled when conditions are favorable. When on account of adverse conditions the engines are unable to haul their rating the Superintendent shall authorize such restrictions as the conditions warrant." I have personally seen weather conditions on routes involved in Witness Ackerman's exhibits where it was necessary to restrict the tonnage ratings to 85 per-cent of the maximum rating. In this connection it is apparent that when an attempt is made to weigh the transportation burdensomeness between different origin fields, such as has been done by Witness Ackerman, there occurs instances where weather conditions would affect adversely the loading orders from one field and during the same period of time the loading orders from some other field, with which that one field is here compared, would not be affected by weather conditions. It appears to me very possible that weather conditions in the Ohio No. 8 District could be affected during certain periods without similar effect burdening the transportation from the (2939) Il- [fol. 2647] linois-Indiana fields, and vice versa.

As to why tonnage ratings do not reflect the productive

capacity of engines, tonnage ratings on our railroad are set based upon the tonnage that can be hauled by the particular locomotive over what is known as a "ruling" grade. These ruling grades vary in length and are generally of an exceedingly short distance as compared with the entire engine district of the locomotive involved.

Witness Ackerman's Exhibit No. 314, for example, showing movement of train on the New York Central Railroad from Corning to Thurston, a distance of 37 miles—ruling grade involved in this connection is the grade leading up to Moxahala Tunnel and is approximately 4 miles long, and the train movement covering the entire territory from Corning to Thurston, in fact, from Corning to Bucyrus, a distance of 115 miles, is the tonnage which can be hauled over the Moxahala grade.

Based upon Mr. Ackerman's theory and using as an example his Exhibit 320, which purports to show the tonnage ratings and tractive effort of locomotives operating from the Pocahontas and New River districts on the Virginian Railway to Cleveland and shows the tractive power required to haul one gross ton of 16.12 pounds a distance of 423 miles, were there a hypothetical railroad of this distance so constructed that (2940) the tractive power required to haul one pound average for the distance 16.12 pounds, and assuming that the maximum rating was established upon the basis of trains composed of cars carrying [fol. 2648] 75 tons gross weight, such resistance would approximate three pounds per ton; and assuming further that this railroad was built of continuous three degree curves, the tonnage ratings which would result from such weight cars and such curvature would require a grade condition, leaving an appreciable factor of safety, calling for the expenditure of 10 pounds of tractive power per ton of train. Such a grade condition necessarily would indicate a railroad of one-half per cent grade, or the equivalent of 26 feet to the mile, which, when applied to the 423 miles, would suggest a terminal approximately 11,000 feet in the air, or almost two miles higher than the initial terminal of such route. However, under Witness Ackerman's theory, were such a railroad in existence, his figures would indicate the same amount of operating difficulty as is now experienced by the New York Central Railroad, the Virginian Railway and the Wheeling & Lake Erie Railway in the

movement of bituminous coal from the Pocahontas fields, the origin assembly yard being Elmore to Cleveland via the Wheeling & Lake Erie route through Zanesville.

Mr. Day: Mr. Examiner, that ends another phase of Mr. Davenport's testimony and I would like to suggest that we adjourn now until 1:15 o'clock.

(2941) Examiner Trezise: All right.

[fol. 2649] (2942) With respect to Ackerman's series of Illinois exhibits, namely 255-267, in addition to what I have already said, I have made a special study and investigation of these exhibits which deal with tonnage ratings and tractive effort of locomotives operating in Illinois and Indiana. The purpose of this special investigation and study was that I wished to ascertain to what extent the routes shown on this series of exhibits reflect the movement of bituminous coal from the Illinois and Indiana fields to the destinations shown on the respective charts. In this connection and within the limits of the time available, I have made some investigation of transportation conditions in the sections covered by Ackerman's charts, particularly in so far as they affect the operations of the Big Four and New York Central. I have also made a study of the tonnages of bituminous coal originating in the various Indiana and Illinois groups shown on Ackerman's exhibits and moving to the destinations shown thereon, and have endeavored to determine the extent to (2943) which they represent the movement of coal.

In order to get the benefit of the latest tonnage figures available, I consulted the records of C. W. Galligan, Chairman of the Illinois Coal Committee, for the years 1931 and 1932, and all of my testimony with respect to tonnage as applied to this series of Ackerman's exhibits refers to tonnage for these two years, except where specifically stated to the contrary.

[fol. 2650] Before discussing the tonnages which moved over the routes shown on the Ackerman charts I should say generally that the tonnages to destinations in Illinois are reported by Mr. Galligan as in five groups as follows: (1) Chicago and Chicago district; (2) Tri-Cities, Moline, Davenport, Rock Island; (3) East St. Louis and St. Louis; (4) Peoria, and (5) Illinois except as otherwise shown.

None of Mr. Ackerman's charts of this series, from 259

to 265, shows any point in the first three destination groups above referred to. In my criticism of Ackerman's charts I will therefore confine myself to the tonnages originating in the Indiana and Illinois groups treated by him and delivered at destinations shown by him, which as above stated, are Peoria and certain other destinations in the interior of Illinois. It is, of course, obvious that there would be included in the figures of the Illinois Coal Committee under the head of "Illinois Except as Otherwise Shown" deliveries (2944) to all points in Illinois shown on any of Ackerman's charts. With this explanation, it will be understood that when I refer to deliveries I do not include deliveries to Chicago, Chicago district, Tri-Cities, Moline, Davenport and Rock Island or to East St. Louis and St. Louis, unless expressly stated.

Referring to Ackerman's Exhibit 259, taking first the origination of coal on the Pennsylvania Railroad where the assembly point is shown as Bicknell, I found that in the years 1931 and 1932 there was no movement of bitu- [fol. 2651] minous coal whatsoever to Peoria from mines on the Pennsylvania Railroad in the Linton-Sullivan group and only 182 and 188 tons respectively from mines in the Brazil-Clinton group.

To Illinois points other than those specifically shown, which, of course, included Paris, Decatur, Marshall, Effingham and Vandalia, as shown on Ackerman's chart, the total coal originated at mines on the Pennsylvania Railroad in 1931 from the Linton-Sullivan district was only 43,804 tons, and in 1932, 39,574 tons, and that originated in the Brazil-Clinton Indiana group on the Pennsylvania Railroad amounted to only 116,930 tons in 1931 and 119,786 tons in 1932.

I have obtained from the Pennsylvania Railroad the total deliveries during the year 1931 at the points shown on (2945) Ackerman's chart, and they are as follows:

Paris	5940 tons
Marshall	1215 "
Vandalia	360 "
Decatur	4185 "
Effingham	990 "
Total	12,690 tons

The P. R. R. carries this record as cars and these tonnage figures here referred to are reduced from the car figures by applying 45 tons per car.

These deliveries, of course, include all coal originating on the Pennsylvania Railroad as well as that originating on the Milwaukee in the Linton-Sullivan group and the Brazil-Clinton group.

[fol. 2652] Turning now to the second page of Exhibit 259, I find from an examination of Galligan's figures that Peoria received from the Brazil-Clinton group on the Milwaukee no coal whatsoever in either year, and from the Linton-Sullivan group only 831 tons in the year 1931, and 460 tons in 1932.

The Milwaukee originated 104,258 tons in 1931 and 74,212 in 1932 in the Brazil-Clinton group and 135,757 tons in 1931 and 126,205 in 1932 in the Linton-Sullivan group, which were delivered at destinations in Illinois except as otherwise shown. As indicated by the figures which I have given, showing the total deliveries at Paris, Decatur, Marshall, Effingham and Vandalia, a very small percentage of the coal originated on the Milwaukee in these two groups moved to the destinations shown (2946) on Ackerman's chart 259.

Ackerman's Exhibit 260 chart purports to show origination of coal in the Princeton group, Linton-Sullivan and Brazil-Clinton groups via the routes of the E. I. & T. H., which is a part of the Big Four, and the Big Four itself, and also the C. & E. I. Railway. The detail supporting the exhibit, however, does not show as an origin any point on the C. & E. I. Railroad.

It appears from the Illinois Coal Committee figures that in the years 1931 and 1932 there was no movement of coal whatsoever to Peoria from mines on the E. I. & T. H. or [fol. 2653] Big Four from the Princeton or Linton-Sullivan groups, and that 613 tons moved from Brazil-Clinton in 1931, and none moved in 1932.

To Illinois points other than those specifically shown, which of course, included Mattoon, Danville, Urbana, Champaign and Bloomington, as shown on Ackerman's chart, the total coal originated at mines on the E. I. & T. H. and Big Four in 1931 from the Princeton group was 9,535 tons, and in 1932, 18,439 tons. From the Linton-Sullivan group 9,114 tons in 1931 and 21,538 tons in 1932; and from

the Brazil-Clinton group 8,409 tons and 692 tons moved respectively in 1931 and 1932, or a total from all three of these origin groups to all destinations in Illinois other than those specifically (2947) shown on Galligan's report, of only 27,058 tons in 1931 and 40,699 tons in 1932.

From Big Four records, it appears that the total deliveries from the Indiana mines during the year 1931 at the points shown on Ackerman's chart other than Peoria are as follows:

Bloomington	100 tons
Urbana	500 "
Mattoon	0 "
Champaign	350 "
Danville	1126 "
Total	2,076 tons

In connection with these figures the Big Four records are also on basis of cars and the figures quoted there are reduced to tons on the basis of 50 tons per car.

Referring to Ackerman's Exhibit 261, from a tonnage [fol. 2654] standpoint, the records of the Galligan Coal Committee show that in the year 1931 there was no movement of coal whatsoever from the mines on the B. & O. Railroad originating in the Brazil-Clinton or Linton-Sullivan groups moving to the two destinations Tuscola or Flora, or to any other destinations in Illinois except 42 tons to Chicago and Chicago district points; in 1932, 311 tons to Chicago, 154 tons to other Illinois destinations.

From the Princeton group the total tonnage originated at mines on the B. & O. moving to Illinois points other than those specifically shown in Galligan's reports amounted to only (2948) 14,236 tons in 1931, and 29,166 tons in 1932.

I have obtained from the Baltimore & Ohio Railroad its total deliveries during the year 1931 at the points shown on Ackerman's chart, and they are as follows:

Tuscola—B. & O. 315 tons; Flora—3,420 tons.

I have obtained from the C. I. & L. total deliveries during the year 1931 at Tuscola, and they amounted to 0 tons.

Referring to Ackerman's Exhibit 262, this chart purports to show routes via P. R. R., C. & E. I., Milwaukee, B. & O.,

Nickel Plate and I. C. to Charleston, Ill. The lines on this chart are heavier and blacker than those on the previous chart, and if judged by this alone would indicate workable routes and density of traffic.

But a more pertinent criticism as to routes perhaps is the fact that the chart omits or fails to show the direct route of the Big Four from Paris, Ill., to Charleston, which [fol. 2655] it is obvious would be the workable route from the originating territory in the Linton-Sullivan and Brazil-Clinton groups to Charleston.

The Galligan Committee report shows, as I have previously stated, that there was no movement of coal during the year 1931 from mines on the B. & O. in the Brazil-Clinton group to any (2949) points in Illinois, other than 42 tons to Chicago and in 1932, 311 tons to Chicago and 154 tons to other Illinois destinations. Our records show that during the year 1931 there was no movement of coal from the Linton-Sullivan group or Brazil-Clinton group via the Big Four or its connections to Charleston, and I have obtained from the Nickel Plate Railroad the total deliveries during the year 1931 made by it which originated in the two above-named groups and the amount so delivered totaled 558 tons, or 13 cars.

Regar-less of what tractive effort figures are derived by Ackerman from the theoretical tonnage ratings in effect over these lines, it is obvious that this chart is absolutely meaningless insofar as actual movements of coal to Charleston is concerned.

The chart, Ackerman's Exhibit No. 263, purports to show routes of movement via Illinois Central and Southern Railroads from Boonville, Evansville, Princeton and Linton-Sullivan groups to Decatur, Clinton, Bloomington, Champaign and Peoria.

For the year 1931, to Peoria from all Southern Railway [fol. 2656] and Illinois Central mines in the origin districts shown on this exhibit the total movement was only 99 tons; in 1932 there was no such movement.

From the Evansville origin group mines on the I. C. to (2950) Illinois points, except as otherwise shown, the total movement for 1931 was 718 tons, and no such movement in 1932.

Where I make reference to Illinois points, except as

otherwise shown, I have reference to that classification in the Galligan report which has been described previously as Section 5 of his report.

From the Linton-Sullivan mines on the I. C. the total movement to all Illinois points, except as otherwise shown, was 390 tons, and 2,539 tons in 1932. There was no movement of coal from the Princeton group mines on the Southern Railway during the year 1931, but in 1932 such movement totaled 137,734 tons to "other Illinois destinations."

This leaves for consideration, insofar as the chart of Exhibit 263 is concerned, the coal which originated in Boonville district on the Southern Railway mines and to all Illinois points, except as otherwise shown. This movement totaled 198,493 tons in 1931 and 67,499 tons in 1932. The chart indicates the movement of this tonnage through Evansville. However, there are no rates in effect from the Southern Railway to Illinois destinations via the Illinois Central through that point, the rates apply through Brown. I was unable to secure any figures as to the portion of the [fol. 2657] 198,493 tons and the 67,499 tons in 1931 and 1932 which originated on the Southern Railway in the Boonville group to (2951) the destinations shown on this exhibit for the years 1931 and 1932. However, for the year 1929 there was no such coal to the Bloomington destination. There was no such coal to the Clinton destination. There was no such coal to the Decatur destination, and there was one car to Champaign.

In other words, making two assumptions, first, the Southern Railway movement of 1929 to the destinations involved was similar in 1931, and second, that the tonnage involved in the movement of this one car was 50 tons. This entire exhibit for the year 1931 covers a total of 1,257 tons, and in this connection Commerce Agent Barry, of the Southern Railway, advised me that the flow of traffic in 1931, insofar as the Southern Railway origins are concerned, was the same as during the year 1929, and that practically all of this fuel is consumed near Chicago.

My information that the rates from the Southern Railway mines to destinations do not apply thru Evansville but instead apply through Browns, was also obtained through Mr. Berry, of the Southern Railway.

I will now take up Ackerman's Exhibit 264, which purports to show routes from Southern Illinois, Centralia,

DuQuoin and Springfield groups to the destinations Decatur, Clinton, Peoria, Bloomington and Champaign via Illinois Central Railroad direct. (2952) It appears from [fol. 2658] Illinois Coal Committee figures that in the year 1931 from the Springfield group to Peoria there was a movement of only 310 tons and from other three groups shown on this chart, that is, Centralia, DeQuoin and Southern Illinois, a movement of only 532 tons, or a total of 842 tons for the entire year. In 1932 this movement was: From Springfield, 2,395 tons; Centralia, 4,232 tons; DeQuoin, 6,412 tons; Southern Illinois, 6,491 tons, or a total of 17,135 tons. It will be observed, however, that Peoria is not located on either of the two principal routes of the Illinois Central to the north.

To Illinois points other than those specifically shown, the Illinois Coal Committee figures show a very substantial volume of movement from origin mines on the Illinois Central. I have not been able to ascertain the precise amount of tonnage originating on the Illinois Central and delivered at the points shown on this chart other than Peoria.

The fact is that this exhibit, 264, and the following exhibit, 265, which shows the route of the Big Four from Southern Illinois to Bloomington and Peoria, are the only charts of this series which show routes which are at all representative when measured by movement of tonnage from the districts shown on each of the respective charts.

The movement to points in Illinois not otherwise shown from Southern Illinois was 763,184 tons, DuQuoin, 308,236 (2953) tons; Centralia, 38,812 tons; and Springfield, 152,[fol. 2659] 835 tons. In 1932 this movement was, from Southern Illinois, 882,526 tons; DuQuoin, 413,341 tons; Centralia, 48,175 tons; Springfield, 128,064 tons.

It will be observed that the tractive power figures on this exhibit and on Exhibit 265 show, if they show anything in accordance with Ackerman's theory, much more favorable operating conditions than any routes shown by him from the Ohio districts to destinations in Northeastern Ohio (see Ackerman's Exhibits 255, 256, 257 and 258).

Calculating an average figure by routes as shown by Ackerman on Exhibit 264, a final tractive effort figure of 13.9 is derived. By comparision this figure is far more favorable than any figures shown by routes on the previous

exhibits in the Illinois series, and is 16 per cent less than the all Illinois-Indiana figure shown on Exhibit 267 and about 15 per cent less than the all Ohio figure shown on Ohio Exhibit 266.

By Mr. Ballard:

Q. May I ask about that last figure? Is that an average based on the two columns of figures in the table in the upper right-hand corner of 264?

Mr. Day: That is right, by routes.

Mr. Ballard: That would follow from what I said, would it not?

The Witness: Yes, that is not a straight (2954) average.

Q. What was the figure?

A. 13.9. Those figures are worked from a total of the [fol. 2660] other sheet involved in that exhibit and represent the through movement from the origin points to the final destination, regardless of the number of times you move the car over a piece of track, what we call through routes.

Q. Treating each route once?

A. Once, yes, sir.

By Mr. Day:

The chart, Ackerman's Exhibit 265, purports to show origination of coal at mines on the New York Central Lines in the Southern Illinois district and the route of movement to Danville, Urbana, Bloomington and Peoria. It appears from the Illinois Coal Committee figures that in the year 1931 there was a movement from Big Four origins in Southern Illinois group to Peoria of 7,164 tons and in 1932, 1,432 tons.

As in the case of the previous Exhibit No. 264, there was a very substantial tonnage of coal originated on the Big Four at mines in the Southern Illinois group and delivered at Illinois points other than those specifically shown. In 1931 this tonnage amounted to 560,912 tons, and in 1932, 268,096 tons. In addition, there was a movement from Big Four origins in this district to Chicago and Chicago district destinations of 711,398 tons (2955), to East St. Louis group 88,450 tons in 1931 and 50,809 tons in 1932, and other

Tri-Cities 44,898 tons in 1931 and 34,429 tons in 1932, or a total of 1,405,650 tons in 1931, and 1,108,090 tons in 1932. As in the case of the former exhibits, it will be observed [fol. 2661] that the transportation conditions over the route of the Big Four as measured by the Ackerman figures are far more favorable even than over the route of the Illinois Central and very much more favorable than any route shown by Ackerman on his series of Ohio exhibits previously mentioned.

Referring to Ackerman's Exhibits 266 and 267, purporting to show a final average figure for Ohio as compared with a grand average figure for all Indiana and Illinois, a critical examination of these two exhibits leads me to the conviction that they were designed for the purpose of showing relatively greater transportation difficulties in Indiana and Illinois than in Ohio. According to Mr. Ackerman's theory, he has first shown various routes from the Ohio districts to the destinations in Northeastern Ohio involved in this proceeding on his Exhibits 255 and 258, inclusive. He has attempted to combine in his Exhibit 266 all (2956) portions of trackage included in his previous route exhibits, but has claimed to include much trackage only once here. As a result of combining these sections or pieces of track so selected he produces a final average Ohio figure of 15.92, which has no relation to or proper connection with the tractive effort figure over any of the entire routes previously shown by him.

In his Exhibit 267 he has first shown various routes from Indiana and Illinois coal fields to Illinois destinations in his Exhibits 259 and 265, inclusive, and then has selected [fol. 2662] from those routes pieces of track or sections in the same way as he did in Exhibit 266, his effort being, as stated by him, to use each piece of track in this exhibit only once. By combining these sections or pieces of track he arrives at a grand total average figure for all Indiana and Illinois of 16.16, and from those two figures draws the conclusion that, relatively speaking, transportation conditions in Indiana and Illinois are more difficult than in Ohio.

While I personally, and the committee for whom I speak, do not believe that such average composite figures have any meaning whatsoever or should be given any weight in comparing relative transportation conditions, I wish to point out that a completely different result would have been

accomplished by using Mr. Ackerman's own figures and combining them for the entire routes shown on his Exhibits 255 to 258 and his (2957) Exhibits 259 to 265. By following the same mathematical calculations that Mr. Ackerman uses and by averaging the routes shown on his Exhibits Nos. 255 to 258 we obtain a final tractive effort figure for all Ohio of 16.53. By following the same process with respect to Exhibit 267 and combining the routes shown in his Exhibits Nos. 259 to 265 we arrive at a grand average figure for all Indiana and Illinois of 15.72, which, it will be observed, shows a diametrically opposite result from that shown by the comparison which Ackerman made. I wish to say again that I discount the value of any such [fol. 2663] comparisons, but, if made in accordance with the method previously followed by Ackerman in several other cases and by the method which, at least, would undertake to compare the entire routes over which coal might move, the results would be exactly opposite from the results claimed by Ackerman.

A more serious and fundamental objection, however, to his Exhibit 267 is the disingenuous character of the title of this exhibit. It will be observed that it purports to show locomotive performance of all sections of railroads operating from Illinois and Indiana coal groups to Illinois destination territory involved in the case of "Intrastate Rates on Bituminous Coal Between Points in the State of Illinois", I. C. C. Docket 23130, Coal Trade Association of Indiana, I. C. C. Docket 23922, together with average performance for (2958) the combined mileages shown in Ackerman's Exhibits 259 to 265." The only inference that can be drawn from this title is that Mr. Ackerman intended to suggest that this exhibit would reflect locomotive performance in all of Illinois territory involved in I. C. C. Docket No. 23130. This, the Examiner will note, is absolutely incorrect, because in I. C. C. Docket No. 23130 the entire State of Illinois was involved as destination territory.

[fol. 2664] (2960) The reason for making this point is that if Mr. Ackerman had shown all of the destination territory involved in Docket No. 23130 in the State of Illinois, he would have shown a number of other routes than those shown in his Exhibits 259 and 265 and combined in his Exhibit 267; and it is significant that the routes which have

been so omitted and which do not form a part of the picture which he attempts to give the Commission in his Exhibit 267 are those which would show, from the standpoint of his theory, the most favorable transportation and operating conditions; for example, he has omitted to mention the route of the C. B. & Q. from Southern (2967) Illinois to Chicago and other Northern Illinois destinations, although that is the principal coal-carrying railroad in the State of Illinois. He has also omitted to show on this exhibit any routes of the C. & E. I. from Southern Illinois and Springfield, Illinois, and has also omitted to show any routes from the Missouri Pacific Railroad mines in Southern Illinois.

Moreover, he shows on his Exhibit 267 no routes from Springfield except Glen Carbon to Champaign on the Illinois Central, and no routes from Fulton County, Peoria or Northern Illinois groups to Chicago or other Illinois destinations, although these groups and destinations in Northern Illinois were the most important short-haul groups in Illinois and the groups for which the short haul scale of rates prescribed in Docket 23130 was intended to apply. I have examined the report in Docket 23130 (reported in 182 I. C. C. 537) and have ascertained from that report that the destination territory was as I have described.

[fol. 2665] To apply the Ackerman theory for whatever it is worth, as the Commission in West Kentucky Coal Bureau v. I. C. R. R. Co., 172 I. C. C. 288, indicated that it should be applied, namely, to the routes which actually moved coal, I desire to file as my Exhibit No. 406 a planograph copy of Ackerman's Exhibit No. 428 filed by him in Docket No. 23430, Central Pennsylvania Coal Producers Association v. B. & O. Railroad, et al.

(2962) (Exhibit No. 406, Witness Davenport, received in evidence.)

Mr. Ballard: I would like to reserve the question of making objection to this exhibit until I find out what it is about. I do not mean to make any objection now, I just wanted to see what Mr. Davenport was getting at.

The Witness: I will go ahead. This exhibit was filed by Mr. Gutheim as a part of Mr. Ackerman's testimony, and was intended to furnish the underlying data for general testimony given by Witness Ackerman so as to show the individual tractive efforts from named districts via named

routes to Chicago. The final results shown on this exhibit for all Illinois and for all Indiana were shown in Exhibit No. 35 (p. 20) filed by Mr. Ackerman in West Kentucky Coal Bureau case, I. C. C. Docket No. 21838 and brought forward by him in the form shown in his Exhibit 428 in the Central [fol. 2666] Pennsylvania Coal Producers' Association case to show the relative conditions on the principal coal-carrying routes from the Illinois and Indiana districts.

Mr. Ballard: Before you leave Exhibit 406 I want to ask one or two questions for the basis of a possible objection. Will you tell me, Mr. Day, what the agreement is referred to in the heading of the exhibit?

Mr. Day: The agreement?

Mr. Ballard: Yes.

Mr. M. Carter Hall: May I answer that question? This (2963) exhibit was furnished by Mr. Gutheim after he had offered in evidence certain final summary results of Mr. Ackerman's experimentations in Illinois and he was asked for the detail underlying those final figures, and by agreement of counsel he was permitted to file this Exhibit No. 428 to show the supporting details by routes for the final figures which he previously put in the record, and this exhibit was transmitted by him to the Commission in a letter and given Exhibit No. 428.

Mr. Ballard: That was an agreement in the Eastern case?

Mr. M. Carter Hall: That is right.

Mr. Ballard: One other question. What is the purpose of this exhibit in this case?

Mr. Day: The purpose is to rebut Mr. Ackerman's showing in his testimony as to what the operating conditions in Illinois and Indiana are.

[fol. 2667] Mr. Ballard: That is, it is intended for comparison with the Illinois-Indiana figure that he obtained in this case?

Mr. Day: That is right.

Mr. Ballard: And intended to show that you get a different figure if you use Chicago as a destination?

Mr. Day: If you use the routes that Mr. Ackerman has used in previous cases to indicate the general transportation conditions in the states of Illinois and Indiana.

Mr. Ballard: As a whole?

Mr. Day: As a whole.

(2964) Mr. Ballard: Is it offered to prove anything with

respect to the manner of making the average, whether by pieces of track or by routes?

Mr. Day: To indicate further that he made his computation based on routes in the previous cases, that is, from points of origin to final destinations, whereas in this case he is using pieces of routes.

Mr. Ballard: No objection.

The Witness: In order to more graphically show the situation covered by this Exhibit No. 428 of Mr. Ackerman's, I have had prepared and desire to file as my Exhibit No. 407 a map entitled "Illinois Junction Points" upon which I have had traced in heavy colored lines the routes over which the preponderating bulk of bituminous coal is transported [fol. 2668] from Southern Illinois, DuQuoin and Centralia fields in Illinois and from the Evansville, Boonville, Princeton, Linton-Sullivan and Brazil-Clinton Indiana fields to Chicago and other Illinois destinations. I have also had blocked out in brown the same destination territory in Illinois which is described in Mr. Durham's Exhibit No. 143 as the destinations involved in I. C. C. Docket 23922.

(Exhibit No. 407, Witness Davenport, received in evidence.)

The Witness: This map clearly shows the extent to which this alleged destination territory involved in I. C. C. Docket (2963) 23922 is penetrated by the heavy tonnage lines handling Illinois and Indiana coal. It will be seen that, to the extent that the Indiana lines originate substantial coal tonnage, very little, as appears from my previous testimony, goes to destinations in the territory blocked in brown and referred to as destination territory in I. C. C. Docket 23922.

The point I am trying to make is that, so far as Ackerman's Exhibit 267 is concerned, as well as the previous locomotive performance charts from which it is compiled, it is not representative in the slightest degree of any substantial coal tonnage moving either from Illinois or from Indiana into any portion of Illinois.

I have prepared an exhibit comparing locomotive performance as indicated by Ackerman's Ohio charts in this [fol. 2669] proceeding, filed as Exhibits 255-258, inclusive, with similar locomotive performance charts filed by him in I. C. C. Docket 21838 and I. C. C. Docket 23430, over routes

from Indiana and Illinois coal fields to Chicago, and I file herewith as my Exhibit No. 408 such a statement.

Mr. Ballard: I want to reserve the right to object to this exhibit later if necessary.

Exam. Trezise: Certainly.

(Exhibit No. 408, Witness Davenport, received in evidence.)

The Witness: I wish to call particular attention to the (2966) following points: First, the tractive power performance of the entire routes from Ohio No. 8 to Cleveland and other destinations in Northeastern Ohio has been computed by me from basic data accompanying Ackerman's exhibits, and are indicated under the heading of the third column as "T. E.". These calculations have been made in the same manner as made by Mr. Ackerman. In the last column to the right, under the heading "Tons Originated," will be found the total bituminous coal which originated in the calendar year 1931 in the Ohio No. 8 and Cambridge districts and was delivered to six of the destinations in Northeastern Ohio which have been most mentioned in this case, to-wit, Cleveland, Lorain, Akron, Canton, Massillon and Mansfield. The deliveries at Huron are not reported separately in the coal statistics of the Ohio Bureau of Coal Statistics. The [fol. 2670] deliveries at Mansfield, Ohio, while included in the total of tons originated, did not move over any of the entire routes shown in Ackerman's Ohio charts. The amounts involved, however, were relatively small, and did move at least to some extent over parts of the routes shown in his Exhibits 255 and 258.

In comparison with these Ohio routes and tonnages the exhibit shows the routes exhibited by Mr. Ackerman from Southern Illinois to Chicago via the various lines originating coal in Illinois, together with the tonnages originated by such lines, and which moved to Chicago during the calendar (2967) year 1931. The exhibit also shows the tonnages moving from other Illinois districts to Chicago and the routes of movement.

When, therefore, like is compared with like under Ackerman's own theory—which I again say we do not believe reflects actual relative transportation conditions—over routes which handle the bulk of the tonnage to the Ohio destinations involved and over routes which handle tremendous tonnages

to Chicago and other points in Illinois, it will be seen that, taken separately or averaged, they show that it takes less tractive effort, under Ackerman's theory and presentation, to move coal in Illinois than in Ohio. Expressed in percentages, according to Ackerman's method of calculation, it takes 22½ per cent more tractive effort to haul coal in Ohio [fol. 2671] than it does in Illinois. The final figure used by Mr. Ackerman on his Exhibit 266 is 15.92, whereas the final figure for all Illinois shown by Mr. Ackerman on his Exhibit 428 is 13.

My Exhibit No. 408 also shows the final average figure for all Indiana shown on Exhibit 428 to be 15.8.

I have made a summary of the relative tonnages which moved during 1931 over the routes to the destinations shown on Ackerman's Exhibits 259 to 265 as compared with tonnages which moved from the Illinois and Indiana mines to, first, Chicago and Chicago district points, and (2968), second, to all other Illinois destinations not specifically reported. I have made that comparison from the figures reported to the Illinois Coal Committee and from the figures furnished me from our records and from the records of other Illinois carriers, the figures I have obtained in connection with coal moved from Indiana and Illinois mines in 1931 to the destinations shown on Ackerman's exhibits to which you refer amounted to 27,827 tons. In comparison with this, the total movement in 1931 to Chicago and Chicago district points from the Illinois and Indiana districts was 8,764,936 tons, and to Illinois points other than those specifically reported by the Illinois Coal Committee from the same Illinois and Indiana groups 7,413,348.

I have compared the total coal originated in the Indiana groups destined to Illinois with that originated in the Illinois groups destined to Illinois, and I find from report of [fol. 2672] the Illinois Coal Committee that the Indiana groups originated 12.6 per cent in 1931 and 16.55 per cent in 1932 of the coal delivered at Illinois points other than those specifically reported in Mr. Galligan's figures. 68 per cent in 1931 and 67 per cent in 1932 of the total to the same destinations was originated in Southern Illinois, DuQuoin, Centralia and Springfield groups. With respect to Peoria, which has been used to a considerable extent as a destination point by Mr. Ackerman, I find that .2 of one per cent in 1931 and .9 of one per cent in 1932 of the total tonnage moved

to Peoria, originated in the Indiana groups. The total movement to Peoria from all Indiana and Illinois groups amounted to 784,690 tons in 1931 and 737,970 tons in 1932, over 98 per cent and 95 per cent of which, respectively, came from Springfield, Peoria and Fulton County groups.

I have just stated the movement to Chicago and to Illinois points other than those specifically reported, which total 16,178,284 tons.

As shown by Kern's Exhibit 52, already in the record, the total tonnage originated in 1931 in the Ohio No. 8, Cambridge, Middle and other Ohio districts, Pittsburgh, Connellsville, Fairmont and other Crescent districts, and delivered at the destinations in Northeastern Ohio involved in this case, amount to 9,139,890 tons.

As to whether the tonnages moving in 1931 from the various districts, to which I have referred, from the standpoint of relative production, are sufficiently representative over a period of years to make the comparisons I have made, of course it is realized that the total production in 1931 from [fol. 2673] all of the districts to which I have referred was much less than in former years; for example, 1926 or 1929, but I believe that the falling off in production has been more or less general in all of the fields to which I have referred and that comparison of production in 1931 would be generally representative of the situation as between the various fields in other years. In making this answer I do not intend to be exact or to say that there have not been variations in production from all of the districts to which I have referred.

Referring to Ackerman's series of Crescent locomotive performance charts, 310 to 323, inclusive, I have taken from the records of the Ohio Bureau of Coal Statistics certain tonnage figures for the calendar year 1931 and segregated them to the various routes shown on Ackerman's charts. (2971) These Ackerman exhibits purport to show the routes of the B. & O. Railroad from Fairmont, Connellsville and Pittsburgh districts to Cleveland and other northeastern Ohio destinations involved in this case. The total deliveries at Lorain, Cleveland, Akron, Massillon, Canton, and Mansfield of coal originating on the B. & O. in the districts mentioned during the year 1931 was as follows. As I have already stated, the deliveries at Huron are not separately shown by the Ohio Bureau of Coal Statistics, and Mansfield, Ohio is not a destination point shown on Ackerman's charts,

but it is a destination to which coal moves for a part of the way at least over the lines shown by Ackerman:

[fol. 2674] To northeastern Ohio district, Cleveland, etc.:

From Pittsburgh district including Moundsville	181,314 T.
From Connellsville district	284,295 "
From Fairmont district (Inc. Coal & Coke Kanawha)	325,765 "
Total	791,375 "

Ackerman's Exhibit No. 309 purports to show the routes of the P. & W. Va. Railway from the Pittsburgh coal group to the northeastern Ohio destinations involved in this case, The total deliveries to Akron, Canton, Cleveland, Lorain, Mansfield and Massillon of coal originating on the P. & W. Va. in the Pittsburgh (2972) district during the year 1931 aggregated 182,014 tons.

Ackerman's Exhibit No. 311 purports to show the routes of the P. & L. E. Railroad and connections from the Pittsburgh and Connellsville districts to Cleveland and other northeastern Ohio destinations involved in this case. The total deliveries to Akron, Canton, Cleveland, Lorain, Mansfield and Massillon during 1931 of coal originating on the Pittsburgh & Lake Erie Railroad in the Pittsburgh district aggregated 92,424 tons.

Ackerman's Exhibit 312 purports to show the routes of the Pennsylvania R. R. and Monongahela Railroads from the Pittsburgh, Fairmont and Connellsville coal groups to Cleveland and other northeastern Ohio destinations involved in this case. The total deliveries at Akron, Canton, Cleveland, Lorain, Mansfield and Massillon during 1931 originating on the Pennsylvania and Monongahela Rail-

[fol. 2675] roads was as follows:

Pittsburgh district—P. R. R.	505,922 tons.
Connellsville district—P. R. R.	627,332 "
Connellsville district—Monongahela R. R.	306,138 "
Fairmont district—Monongahela R. R.	670,042 "
Total	2,119,434 tons.

In addition to the above mentioned tonnage originating in the Pittsburgh district, there was a total of 688,665

tons originated on the Montour Railroad, and 13,207 tons originated (2973) on the P. C. & Y. This tonnage also moved into the northeastern Ohio destinations involved in this case. It appears that Witness Ackerman has not indicated the routes over which this tonnage moved.

Ackerman's Exhibit 314 purports to show the route of The New York Central Railroad from the Kanawha district to Cleveland. The total deliveries to Akron, Canton, Cleveland, Lorain and Mansfield during the year 1931 of coal originating on the New York Central in the Kanawha district aggregated 12,178 tons.

Ackerman's Exhibits Nos. 315 to 319 purport to show the route of the Chesapeake & Ohio Railway Company from the Kanawha and New River coal producing districts to Cleveland. The total deliveries at Akron, Canton, Cleveland, Lorain, Mansfield and Massillon during the year 1931 of coal originating on the C. & O. in these two districts aggregated 548,099 tons.

Ackerman's Exhibits 316 to 321 purport to show the [fol. 2676] route of the N. & W. Railway from the Kenova, Thacker, Tug River, Clinch Valley and Pocahontas coal districts to Cleveland. In this connection the total deliveries to Akron, Canton, Cleveland, Lorain, Mansfield and Massillon during the year 1931 (2974) originating on the N. & W. in the above mentioned coal producing districts aggregated 927,934 tons.

Ackerman's Exhibit No. 317 purports to show the route of the Louisville & Nashville Railroad and connections from the Harlan, Hazard, McRoberts, Kentucky and Jellico coal producing fields in Tennessee to Cleveland. The total deliveries of coal originating on the L. & N. R. R. in the above mentioned districts during the year 1931 to Akron, Canton, Cleveland, Lorain, Massillon, and Mansfield aggregated 151,940 tons.

Ackerman's Exhibits 318 to 323 purport to show the routes of the Southern Railway and connections used in moving coal from Oneida, Stearns and Oakdale, Tenn., to Cleveland. The total deliveries at Akron, Cleveland and Mansfield of coal originating on the Southern Railway during the year 1931 amounted to 1,286 tons.

Ackerman's exhibit 320 purports to show the route of the Virginian Railway from Pocahontas and New River coal fields of West Virginia to Cleveland. The total de-

liveries of coal originating in the above mentioned fields on the Virginian Railway in 1931 aggregated 108,490 tons.

(2975) Summing up the various tonnages, I find that during the year 1931, 3,887,119 tons moved from the [fol. 2677] Pittsburgh, Connellsville and Fairmont coal fields and 1,749,927 tons moved from the southern West Virginia coal fields to Cleveland and other northeastern Ohio destinations involved in this case, the total tonnage from both the northern and southern fields being 5,637,046.

In addition to what has been said by Mr. Heinish at page 456 of the record, the territory over which our assembly service is performed in the Ohio No. 8 district on the New York Central extends from Smithfield on the Dillonvale and Smithfield Railroad to Minerva. The Dillonvale and Smithfield Railroad is some 4½ miles in length. The active mines in the Ohio No. 8 district are six in number, of which two are located on the Dillonvale and Southern, three are located at Piney Fork, a distance of 4.83 miles north of Dillonvale, and the sixth mine is located at Hopedale, a distance of 10.93 miles north of Dillonvale. A study of the grade line of this piece of track shows that there are three severe rises in the movement from Dillonvale to Minerva, the first of which shows a climb of 43 feet in 12 miles, the second a climb of 192 feet in 4.7 miles, and the third a climb of 266 (2976) feet in 7½ miles. Based on the December, 1932, output of these six mines, 43 per cent of this coal was hauled over all three of these rises, 37 per cent covering the two latter rises completely and half of the third rise, and 20 per cent was hauled only over the two latter rises. The heaviest grades against the coal move- [fol. 2678] ment, and these grades are compensated for curvature, are 75 feet to the mile, or 1.4 per cent for 1.63 miles, 63 feet, or 1.2 per cent for 1.66 miles, 53 feet, or one per cent for 1.77 miles, 74 feet, or 1.4 per cent for .66 miles, 67 feet, or 1.3 per cent for 1.08 miles.

The curves encountered in this territory, measuring from six to seven degrees, number 34, and there are two curves measuring from seven to eight degrees, one curve from eight to nine degrees, and one 10-degree curve. We use in this service the formerly described Mallet compound locomotive almost entirely, it being the estimate of the Assistant Superintendent, who is located on the line, that 90 per

cent of the assembly service is performed by this type of locomotive.

Q. It has been claimed throughout this record by Mr. Ackerman and by his counsel that in his Exhibits 266 and 267 there is no duplication of "pieces of track" or "train rating" districts, and it is also claimed that his final tractive power figure reflects all the transportation conditions encountered in the movement of trains. Will you refer to his Exhibits 257 and 258 and make such comments as you may deem pertinent, first, as to the accuracy of his statement of fact, and second, as to the peculiar results with respect to showing made by him of transportation conditions over a portion of the route shown by him on these exhibits?

(2977) A. Notwithstanding Mr. Ackerman's claim that he has not duplicated any pieces of track in Exhibit 266, I believe he has duplicated a portion of the track included in the route of the New York Central from Ohio No. 8 to Cleveland as shown on Exhibit 258, and which is also a portion of the route of the Pennsylvania Railroad as shown by him from Ohio No. 8 to Cleveland on his Exhibit No. 257. I refer specifically to that portion of the rails of the Pennsylvania Railroad over which the New York Central has operating trackage rights from a point between Minerva and Bayard to Brady Lake, a distance of approximately 36 miles.

But aside from the correctness of his view or mine with respect to duplication of trackage, I wish to point out the complete failure of the Ackerman theory by showing [fol. 2679] the different results produced according to Ackerman's theory by the operation of the Pennsylvania Railroad and New York Central (2978) Railroad over the same piece of track. In other words, it is obvious that the same grades, the same curves, the physical conditions, and all the disabilities are, or should be encountered by both railroads in performance over this piece of track. Upon examination of the basic figures, however, used by Mr. Ackerman and applying his method of calculation, I find that the final tractive power figure which he shows for the New York Central between Minerva and Brady Lake to be 19.9. That is covered by Exhibit 258. Upon examination of the basic figures, however, used by Mr. Ackerman and applying his method of calculation, I find that the final

tractive power figure which he shows for the New York Central between Minerva and Brady Lake to be 19.9, whereas the figure arrived at using the same basic calculations applied to the tonnage ratings and tractive power of the Pennsylvania Railroad produces a final tractive power figure of 14.4, or a difference on the basis of Ackerman's figures applied to the same piece of railroad (2979) of approximately 38 per cent. Upon such a showing, can it be reasonably urged that Ackerman's tractive power figures reflect anything of value with respect to physical conditions encountered in the operation of trains?

Peoria, Illinois, is not within the destination territory involved in Docket 23922 and as described on Durham's [fol. 2680] Exhibit No. 143. Peoria appears as a destination on five out of seven of Ackerman's Indiana-Illinois charts, and on one exhibit twice. It appears twice on Exhibit 259, once on Exhibits Nos. 260, 263, 264 and 265. I do not know of any reason, from a transportation standpoint, or any other reason, why Peoria should have been selected as a destination point to be shown on Ackerman's charts. Peoria is apparently the only point outside of the destination territory involved in 23922 and the only point in the entire remainder of the State of Illinois which was included within the destination territory involved in 23130. Peoria's location in the center of a mining district is indicated by the map exhibit offered as Washer's (2980) Exhibit No. 398. I investigated the coal delivered in the years 1931 and 1932 at Peoria. I found from an examination of Galligan's figures what tonnage was delivered in 1931 and 1932 at Peoria, which originated in any of the Indiana or Illinois groups. I have stated the tonnage to Peoria via various railroads separately, in connection with my previous discussion of Ackerman's charts, and from various groups and via railroads. I have added up all of the tonnage that I have referred to, and the total for the years 1931 and 1932, by groups, is as follows:

	1931	1932
Evansville	0	0
Danville	0	132
[fol. 2681] Princeton	0	5,612
Brazil-Clinton	850	188

	1931	1932
Linton-Sullivan	831	679
Boonville	99	0
Belleville	318	3,539
Southern Illinois	8,574	11,371
DuQuoin	297	6,412
Centralia	0	4,232
Fulton County-Peoria	435,534	504,128
Northern Illinois	0	791
Springfield	338,187	200,886

(2981) My curiosity was excited by this showing of relative insignificant tonnage which moved to Peoria from the Indiana groups involved in 23922, and because of this I endeavored to find out what would be the effect if Peoria were omitted as a destination from all of Ackerman's charts in which it appears, and also from his composite Exhibit No. 267, which was intended to show a picture, as he says, of conditions in Illinois involved in Dockets 22922 and 23130.

In connection with my recomputation of the figures on Exhibit 267, in addition to eliminating Peoria as a destination and those portions of the line reaching Peoria which traverse the territory between Peoria and the destination territory involved in 23922, I took occasion to correct the very serious error in mileage, where Mr. Ackerman shows [fol. 2682] the distance from Urbana to Champaign is 51.8 miles, although on his own Exhibit 260 this mileage is shown as 2.1 miles. There could, of course, be no objection to my correcting this obvious error. After eliminating Peoria as a destination and correcting this error in mileage, my computations show a revised composite figure comparable to that shown on Exhibit 267 of 15.82. It will be recalled that the combined figure for the Ohio coal districts shown on Exhibit 266 is 15.92 pounds of tractive power required to haul one gross ton one mile. So that it would appear that, by simply (2982) eliminating a single destination such as Peoria the result obtained by Mr. Ackerman and claimed to be a representative showing of transportation conditions in Illinois is completely reversed as compared with Ohio. This also indicates the extent to which varying results could be obtained by selecting destinations to accomplish a desired result. By this, of course, I do not

mean to charge Mr. Ackerman with any ulterior motives, but it seems to me a convincing demonstration of the utter lack of value of any comparative unit which can be so easily manipulated to produce diametrically opposite results. It is perhaps peculiar in this connection that two out of three portions of trackage eliminated by me showed a much higher tractive effort figure than the average arrived at by Ackerman for the destination territory referred to in the heading of his Exhibit 267.

Other questions were raised in my mind as to Ackerman's [fol. 2683] selection of destination points, in reviewing his exhibits. In connection with the group of exhibits showing Ohio destinations I noted that his exhibit showing routes from Ohio No. 8, Cambridge, Pittsburgh, Connellsville and Fairmont fields all took into account destinations which I believe can be termed Northeastern Ohio; that is, generally—Huron, Cleveland, Lorain, Rocky River, Akron, Orrville, and Massillon, while the groups of exhibits showing routes (2983) from Southern high volatile and Southern low volatile fields only made use of Cleveland as a destination point. There was not sufficient time available to attempt to secure all of the information necessary to develop the facts which would have resulted had Mr. Ackerman made use of the same destinations in his routes from Outer and Inner Crescent fields. I did, however, have sufficient time to apply to Mr. Ackerman's Exhibit 314, which shows the route of the Virginian, New York Central and Wheeling & Lake Erie to Cleveland, the portions of Exhibit 255 showing the routes of the Wheeling & Lake Erie and connections from Ohio No. 8 to Northeastern Ohio destinations, in addition to Cleveland, and, computed by Mr. Ackerman's method, the final result for this exhibit, as revised and in lieu of the figure of 16.3 pounds of tractive power required to haul one gross ton, is a figure of 14.83 pounds, or a decrease of about 11 per cent, as compared with Mr. Ackerman's Exhibit 314.

(2984) I have examined Mr. Ackerman's exhibit 331 [fol. 2684] and his comments in connection with it, at page 1743 of the record, as follows: "It therefore reflects in one showing relative rate levels, distances and transportation conditions and shows that under the present rate structure the traffic from Ohio No. 8 and Cambridge is yielding to the carriers for the service performed greater revenue than

the traffic from any of the interstate districts and with the present Ohio rates are relatively higher than the rates from any of the interstate districts." I have analyzed the exhibit, and I cannot agree with Mr. Ackerman in any portion of the statement read from the record, except partially as to distances. First, it does not reflect relative levels in any other way than would be reflected by comparisons in per cents in ton mile earnings. Second, it compares distances as computed by him and depends for the correct list of his comparisons upon his mathematical computations and his selection or exclusion of mines, as the case may be. Third, it does not reflect transportation conditions as I have shown by the evidence already given.

(2985) To amplify my first point I again call attention to the fact that his tractive power study does not consider terminal service at either origin or destination, nor does it take interchange service into account. It therefore treats with miles of line hauled only. Tractive power required to haul one ton one mile (his Column "C") not varying greatly, and bearing in mind that as the distance increases [fol. 2685] ton mile earnings decrease and that it is necessary in a long haul to move a ton more miles to earn one cent than is the case with a short haul, his last column means no more than would the expression in percents of the approximate difference in ton mile earnings for the varying distances, terminal services having been excluded. In fact, it means less actually than a percentage comparison of ton mile revenue, for the inclusion of tractive power data is entirely misleading. In other words, mills per ton mile decrease as the total tractive power pounds expended to earn one dollar, or in other words, distance increases. This is all his exhibit shows.

As indicating the extent of the movement in 1931 to some of the destinations shown on Ackerman's Exhibit No. 253, I have procured from the Pennsylvania Railroad and Big Four Railroad the total deliveries of coal to a number of these points, which coal originated in the Indiana (2986) groups, Brazil-Clinton, Linton-Sullivan and Princeton, and I file such a statement as my Exhibit No. 409.

(Exhibit No. 409, Witness Davenport, received in evidence.)

In many cases these points are local points on the lines to which I have referred. This is not intended to be a complete statement of tonnage delivered to these points, but it is, I believe, representative as showing their relative lack [fol. 2686] of importance as destinations for coal. None of the points shown are on the B. & O. The B. & O. tonnage is not the only omission from these figures. These are just deliveries made by the Pennsylvania and Big Four at those stations from the records of the railroads—not Mr. Galligan's records. Those were the deliveries made by those lines. The two foot-notes indicate where the station is with respect to the railroad. None of these stations I have already said were on the B. & O.

I was present when Mr. Ackerman was cross-examined at the time when there was a discussion (2987) between him, Mr. Ballard and Mr. Hall as to what was the unit used by Mr. Ackerman in making his comparison of transportation and operating conditions. I stated I was a witness in Central Pennsylvania Producers Association, Docket 23430, and in which Mr. Ackerman also testified. I have before me the record in that proceeding, page 3807 where Mr. Ackerman was attempting to rebut my testimony, at which time he said: "The difference between Mr. Davenport's formula and mine is that I have used a tangible thing, being a train of cars of coal, and the number of cars in a train of coal directly reflect unit costs.."

Again, at page 3809 of the record, when he was attempting to rebut my Exhibit 966 on the ground that it reflected the transportation results of handling all of the commodities in the trains included by our committee in the [fol. 2687] joint study used in that case, he was asked by his counsel: "In the figures upon which you based your studies, that is, the set-up of the carriers, was that a set-up for coal performance?"

"A. It was."

(2988) Mr. M. Carter Hall: Mr. Examiner, may I make this brief statement right there? At the time when Mr. Ballard was speaking in answer to Mr. Davenport's criticism of the title of Mr. Ackerman's Exhibit No. 267 I left the room for the purpose of getting the record, as I thought the record indicated very much more clearly than the title of the exhibit just what the exhibit was intended to show, and I should like to refer to page 1685 of the record at

which time Mr. Ballard asked Mr. Ackerman this question: "What have you done to draw together your locomotive performance figures in some way that will permit a comparison between conditions in Ohio and conditions in Indiana-Illinois territory covered by cases 23130 and 23922?" Mr. Ackerman's answer was, "In my next exhibit, Key Numbers C. B. A. 7 and C. B. A. 7A, Exhibits 266 and 267, I have drawn the Ohio locomotive performance figures together into a single figure representing the operating conditions from the No. 8 and Cambridge districts via all of the routes studied to all of the destinations, and I have similarly drawn together the Indiana-Illinois figures so as to make one figure representing the conditions from all of [fol. 2688] the Indiana-Illinois origin groups via all of the routes studied to all of the destinations covered in the territory involved in No. 23130 and No. 23922."

I think that ought to appear in the record in justification (2989) of Mr. Davenport's criticism of the title on that exhibit.

Mr. Ballard: I agree with that, and I recognize that the petitioners and the witness were misleading, and I haven't the slightest doubt that they were misleading in good faith, by the fact that the language of the question that Mr. Hall has just read was too broad and did not accurately state the territory that was intended to be covered.

Mr. Bull: Mr. Hall, before you started to speak Mr. Davenport just ended a quotation from the Eastbound Coal Case. You quoted from the record in the instant case, did you not, Mr. Hall?

Mr. Hall: That is correct, Mr. Bull.

(Narrative continued:) I have previously in my testimony referred to the numerous errors in Mr. Ackerman's exhibits, and I desire to make some statement with respect to some of these errors on the portions of his exhibits dealing with routes of the New York Central, Big Four, E. I. & T. H. and P. & L. E. I have hurriedly checked his facts for errors, and find some 95 errors in mileages ranging from 1 to 50 miles, 130 errors in tonnage ratings, reaching [fol. 2689] a maximum of 1600 tons, 152 errors of locomotive tractive efforts, reaching a maximum of 16,000 pounds, in addition to errors of names of terminals, errors of class (2990) power operating in locomotive districts, errors in

connection with helper performance, errors in connection with the doubling of grades, errors in car factors and adjusted tonnage machines, and errors in composite tonnage ratings made by using ratings for locomotives not in service, and additional errors in the duplication of trackage in arriving at his composite figures. I do not feel it is necessary to clutter up these proceedings and waste time of the commission calling attention to these individual errors, in view of the fact that the entire theory expounded by Mr. Ackerman, were he in position to secure accurate facts underlying that theory, does not place in the hands of the Commission any reliable information with reference to operating conditions as between routes of different carriers.

Examiner Trezise: Does that complete Mr. Davenport's direct?

Mr. Day: That is all on direct.

Mr. Ballard: Mr. Examiner, if I may, I would like to have an opportunity to examine the transcript of Mr. Davenport's direct testimony before I decide how much time will be necessary for preparation for cross, if any cross.

Examiner Trezise: In other words, you want the reporter [fol. 2690] to write out today's record, you don't care to cross examine now?

Mr. Ballard: It would be a waste of time.

Examiner Trezise: Under the circumstances the witness will (2991) be excused, subject to recall.

Mr. Gutheim: There is one other thing I would like to do, Mr. Examiner. At the conclusion of Mr. Ackerman's testimony I believe he left the record in such shape as to contend that in Docket 23430, the Eastbound Coal Case, that he had made a study of the transportation conditions in the shape of pieces of routes along the same lines that he has followed here in presenting his rebuttal exhibits. I have here a certificate from the Commission to which is attached the various exhibits presented by Mr. Ackerman at the rebuttal hearing in that proceeding, and as Mr. Ackerman was not able to refer to the particular exhibits to which he had reference at that time, I would like to introduce this, the certificate and the exhibits that are attached to it and have permission to subsequently serve copies upon such parties as may require them.

(2992) Mr. Ballard: Is the purpose of this simply to prove a negative fact, so to speak, to show that he did not do what he said?

Mr. Gutheim: The purpose mainly is this, Mr. Ballard, as I recall the situation, Mr. Ackerman, in replying to my [fol. 2691] questions, admitted that he did not use pieces of routes on his direct testimony in Docket 23430, and then in replying to questions to you he said that he had used pieces of routes in his rebuttal exhibits. The question here is the extent to which Mr. Ackerman's methods are the same as he used in other proceedings. In these proceedings he did not refer to any particular rebuttal exhibits. I am putting them all in and the matter is open for argument.

Mr. Ballard: I have no objections. I think it is a very cumbersome way to accomplish Mr. Gutheim's purpose, but it is not objectionable to me. According to my understanding it confirms Mr. Ackerman's statements.

Mr. Gutheim: According to our understanding it does not, and that is the reason I say it is for argument.

Examiner Trezise: That will be marked Exhibit No. 410.

(Exhibit No. 410, Witness Gutheim, received in evidence.)

Mr. Bull: Might not the record state what the exhibit numbers were in the Eastbound Coal Cases?

Mr. Ballard: Nos. 1164 to 1169, inclusive.

[fol. 2692] K. V. Conrad was called and, having been duly sworn, testified as follows:

Direct examination.

By Mr. M. Carter Hall:

(2993) My name is K. V. Conrad; residence, Roanoke, Virginia; occupation, Assistant Superintendent Transportation, Norfolk & Western Railway. I have been employed by the Norfolk & Western Railway for about 30 years, all of which time has been spent in the transportation department. My present duties include supervision of locomotive ratings and train performance.

I am a member of the committee to which Mr. Davenport referred that undertook to analyze Mr. Ackerman's testimony. In ordinary railroad practice train ratings are not used as a means of measuring relative operating performance, that is, by the Norfolk & Western Railway, or any other railroads that I know of.

Mr. Ballard: We admit that, if it will save any time.

(2994) Mr. Hall: That will save time if it be admitted on this record that there is no such thing in any ordinary railroad practice as measuring railroad operating performance by train ratings, because we want to ask that question of at least four more operating people.

Mr. Ballard: I admit it.

(Narrative continued:) Referring to page 1652 of the record at which Mr. Ackerman says: "The size of the [fol. 2693] trains or the tonnage ratings of the train is, of course, dependent, among other things, on the tractive power of the locomotive which hauls that tonnage, and railroads, in their ordinary practice, endeavor to get the maximum efficiency out of the amount of the tractive effort available to haul traffic. This is reflected in the type of power assigned to each train rating district in actual practice. The formula which combines the train rating and the tractive effort of the locomotive used, therefore, reflects all of the conditions encountered in actual operations." In my opinion as a practical operating man the Ackerman formula does not reflect "all of the conditions encountered in actual operations." While the Ackerman theory does not purport to give any (2995) consideration to assembly service, his application of the theory on a road like the Norfolk & Western, results in the inclusion, in many cases, of road mileage over which assembly crews are operated. In making his calculation of road service from the Pocahontas Coal District on the Norfolk & Western he has taken into account the entire road mileage west of Flat Top, Va., which is on the extreme eastern boundary of the Pocahontas coal district. Coal is assembled at other points within the boundaries of the Pocahontas Operating District and west of Flat Top, particularly at Eckman, W. Va., which is seventeen miles west of Flat Top. The line between Flat Top and Eckman is more difficult than any other portion

[fol. 2694] of the haul on westbound coal and, of course, only a very small portion of the coal from Pocahontas District is assembled at Flat Top and other points east of Eckman. Mr. Ackerman's theory, however, uses the line between Flat Top and Eckman as typical for movement of all coal from Pocahontas District.

I was a witness in what is known as the Lake Cargo Coal cases of 1930, and was a witness in Docket 23842, State Corporation of Virginia, et al., vs. Norfolk & Western Railway, decided December 19, 1932. (2996) In connection with the Lake Cargo Coal Cases of 1930 I also participated as a member of a committee of operating people. In neither of those cases did I apply the Ackerman theory as such for the purpose of comparing operating or transportation conditions.

With respect to tonnage ratings, the volume of coal moving from Norfolk & Western coal fields via Columbus and Cincinnati, Ohio, is such that we ordinarily do not run coal trains with less than full tonnage on account of lack of tonnage, except occasionally on Sundays and Mondays to clean up cars that are ready for movement. We do run trains with reduced tonnage on account of weather conditions, to balance power, and for other necessary operating reasons. In the month of December, 1932, we despatched from Portsmouth, Ohio, for Columbus, 159 slow freight trains with an average rating of 10,048 tons and an average load of 8,801 tons. The loss of tonnage of these (2997) [fol. 2695] trains being divided, 6,100 tons account not available, 93,533 tons to balance power, and 98,634 tons account of weather conditions.

As to whether Mr. Ackerman's theory reflects the burdensomeness of transportation as illustrated by diffusion of coal traffic—in contrast with the situation existing on some roads where there is diffusion of coal traffic at points a short distance from the coal mines, practically all westbound coal originating in the new coal fields moves in a solid stream as far west as Portsmouth, Ohio, or a distance of about 200 miles from the Pocahontas fields. At Portsmouth about 10 per cent of the tonnage diverges to our Cincinnati Line for movement to and via Cincinnati. The main tonnage moves over our line extending from Portsmouth to Columbus, Ohio, and is in large part delivered to connections at Columbus proper; however, various ton-

nages ranging up to 100 cars per day are delivered to the D. T. & I. at Waverly, a point about 70 miles east of Columbus, and to the B. & O. at Chillicothe, about 50 miles east of Columbia, and other substantial tonnages are delivered to the C. & O. and N. Y. C. at Watkins Yard, about seven miles east of Columbus Yard. Trains setting off at Waverly, Chillicothe and Watkins move into Columbus with less than full tonnage, at least to the extent of the tonnage set off and such underloading, as well as (2998) such as is due to weather conditions, balancing of power, or other reasons, [fol. 2696] is not reflected in Mr. Ackerman's application of his theory.

With respect to Mr. Ackerman's theory ignoring the elements of time, it is apparent that his use of rating figures does not reflect the locomotive and crew time consumed in handling a given tonnage over various lines of the railroad. To illustrate in the case of the N. & W. Railway, our records show that slow freight trains operated from Eckman, principal assembly point in our Pocahontas District, to Williamson, during the month of October, 1932, averaged 13.75 miles per hour between terminals, whereas similar solid coal trains operated between Williamson, W. Va., and Portsmouth, Ohio, averaged 17.01 miles per hour and similar trains operated between Portsmouth and Columbus, Ohio, averaged 14.10 miles per hour. These differenees in speed of trains are not reflected in Ackerman's tonnage ratings.

The gross tons of a train are not directly related to energy expended in moving a given number of gross tons. For example, on the Norfolk & Western Railway between Eckman and Williamson, W. Va., our grade line for westward movement is sharply descending for a considerable portion of the distance, and the adverse grade met on any portion of the run is so slight that ratings for westbound movement (2999) are primarily controlled by the tonnage that can be handled on eastward movement. If full tonnage trains were handled, the locomotive energy spent would be [fol. 2697] substantially less than on the district Williamson to Portsmouth, Ohio, where the grade line is such that practically constant pulling by the locomotive is required. In fact, and as showing the inaccuracy of Mr. Ackerman's theory, we operated 164 coal trains into Williamson from the east during the month of December with an average rating of 10,149 tons but average load of only 8,061 tons,

the trains being underloaded in order to return to Williamson locomotives that had moved east from that point—December, 1932.

By Mr. Ballard: The last illustration I gave was to illustrate that the train rating was not directly related to the energy expended.

By Mr. Hall: Tractive effort reflects only partially locomotive size. To illustrate, tractive power of N. & W. Railway freight locomotives does not vary relatively with weight on drivers. Our heaviest type of Mallet locomotive has weight on drivers of 138.84 per cent of the weight of our small Mallet locomotives but has tractive power 167.27 per (3000) cent of the tractive power of the small locomotives.

Mr. Ackerman's theory does not reflect density of traffic. To illustrate, in Mr. Ackerman's exhibits Nos. 316 and 321 he shows tractive power requirements per gross ton mile as substantially lower on N. & W. Railway operating district extending from Williamson to Portsmouth, Ohio, than on the district from Portsmouth to Columbus, Ohio. In his [fol. 2698] calculations, however, he gives exactly the same weight to the road mileage of each district although there is a greater density of traffic on the more efficient line from Williamson to Portsmouth than on the line from Portsmouth to Columbus. All coal traffic handled from Portsmouth to Columbus must move over the line Williamson to Portsmouth, and in addition there is handled over the line from Williamson to Portsmouth substantial tonnage of coal that moves west from Portsmouth via Cincinnati.

Ackerman's theory does not reflect the efficiency of locomotive operations in individual train operations. The efficiency of locomotive operation can not be measured by a calculation reflecting only the miles the locomotive is run and the full tonnage rating therefor. Where the locomotive is used in train for only a short distance there is necessarily much idle time awaiting use on other trains, as in the case of engines used for helper service, also time the locomotives can be kept in use is (3001) greater over long continuous runs, because the idle time at terminals in handling engines is not proportionate to the mileage covered

prior to their arrival at the terminal. In connection with use of engines in helper service, mention may be made of the fact that during the year 1932 locomotives assigned to helper service on our Blue Ridge grade between Roanoke and Crewe, Va., made average daily mileage ranging from 57 to 86 miles service per day, while the same type of [fol. 2699] locomotive for the system as a whole made average daily mileage ranging from 106 miles to 125 miles per serviceable day. On westbound coal movement from our fields we have one engine district of 74 miles from Eckman to Williamson, W. Va., and another of 112 miles from Williamson, W. Va., to Portsmouth, Ohio, and another of 98 miles from Portsmouth, Ohio, to Columbus, Ohio. On the run from Williamson to Portsmouth we secure 112 miles from the engine before it goes in for terminal attention and turning while on the run from Eckman to Williamson we have to give the same terminal handling after a run of 74 miles.

The Ackerman theory does not reflect the burden of expense incident to refinement in locomotive construction as exemplified by the installation of large tanks, etc. The Norfolk & Western Railway own 331 Mallet type locomotives used in freight service and a large number of these engines were originally constructed with 9,000 and (3002) 12,000 gallon tanks. During the period 1925 to 1932 we have constructed at a large expense for replacement of small tanks a total of 120 tanks of 16,000 gallon capacity, 90 of 18,000 gallon capacity, and five of 22,000 gallon capacity, and have five additional tanks of 22,000 gallon capacity under construction. At the present time all of the large Mallet engines in operation are equipped with tanks of 16,000 gallon [fol. 2700] capacity or more and most of the small Mallets have tanks of similar capacity, although originally constructed with tanks of only 9,000 gallon capacity. Since these larger tanks were placed in service the time on road of our coal freight trains has been reduced. These improvements in efficiency are not reflected in a use of tonnage ratings and tractive power.

Mr. Ackerman's theory does not take into consideration the burden of returning empty cars to coal mines. Coal moves in large volume to both the east and the west from all of the Norfolk & Western Coal districts. For this reason, we do not have in the coal field districts empty coal

car mileage equivalent to the loaded coal car mileage. The Pocahontas, Tug River, and Thacker, coal districts on the Norfolk & Western are served by our Pocahontas operating district covering the line Williamson, W. V., to Bluefield, W. Va., with connecting branches. On this operating district the empty mileage on N. & W. coal cars in (3003) the year 1932 amounted to only 73.15 per cent of the loaded car mileage of N. & W. coal cars on that district. This condition of great practical importance in actual operations is not reflected by the Ackerman theory.

Exhibit 321 is one of the Ackerman charts purporting to show routes from certain coal districts of the Norfolk & Western. I believe there are two. (1) Although the sketch map of line of Norfolk & Western Railway from Bluefield to Columbus as shown on sheet 1 of Ackerman's Exhibit [fol. 2701] 321 is a correct copy of exhibit introduced by the N. & W. Railway in the Lake Cargo Rate case, the calculation which Mr. Ackerman shows on that exhibit is not based on use of figures presented by the N. & W. Railway in the Lake Cargo Coal Rate Case. If Mr. Ackerman had used without change figures submitted by the N. & W. Railway in the Lake Cargo Coal Rate case his calculation of tractive power per gross ton mile to Cleveland via the Big Four (3004) would have developed figure of 11.64 pounds instead of figure of 12.73 pounds which he shows on Exhibit No. 321. Analysis of detail figures shown on sheet 2 of Ackerman's Exhibit 321 shows that he has used figures different from those given in testimony of N. & W. Railway in the Lake Cargo Coal Rate case as follows:

(a) Page 2 of Ackerman's exhibit 321 shows line from Norton, Va., to Finney, Va., figures for which were not included in exhibit filed by the N. & W. in the Lake Cargo Coal Rate Case.

(b) Page 2 of Ackerman's Exhibit 321 shows line Finney, Va., to Richlands, Va., which was not included in exhibit filed by the N. & W. Railway in the Lake Cargo Coal Rate Case. Also Mr. Ackerman shows for this line the tractive power of various classes of locomotives which are not used on that line, as was shown by testimony in the Lake Cargo Coal Rate Case. Class Y engines are shown [fol. 2702] while actually Class Z engines are invariably

used. (c) On page 2 of Exhibit 321 Mr. Ackerman shows ratings for trains Clift to Flat Top, Pocahontas to Flat Top and Flat Top to Eckman as submitted in the Lake Cargo Coal Rate Case by the N. & W. Railway for electric locomotives, which are the locomotives actually used in this territory. Mr. Ackerman has not used the tractive power of electric locomotives but has used against the ratings for electric locomotives (3005) the average tractive power of Class Z and Class Y steam locomotives and Class LC-1 and LC-2 electric locomotives.

(2) In addition to the items mentioned, that is Mr. Ackerman's variations from figures presented by the N. & W. in the Lake Cargo Coal Rate Case, his calculations are not on a proper comparative basis for the reason that tractive power figures for N. & W. locomotives as used in the lake Cargo Coal Rate Case were calculated at that time on a formula employed by the N. & W. Railway which is different from that prescribed by the Interstate Commerce Commission and generally used by other railroads. Since the Lake Cargo Coal Rate Case tractive power figures for N. & W. Railway locomotives have been calculated according to I. C. C. formula, which reduces the calculated tractive [fol. 2703] power about 5 per cent on the average.

Mr. Ackerman's calculations are also erroneous as representing present day conditions because of changes made in the N. & W. Railway operation since the Lake Cargo Coal Rate Case, which have resulted in increasing the ratings about 10 per cent.

[fol. 2704] Cross-examination.

By Mr. Ballard:

(3006) For a small part of the coal the line haul of the Norfolk & Western Railway in the Pocahontas district on the traffic moving west begins at Flat Top. That is the most easterly point at which westbound movements can be regarded as line haul. Mr. Ackerman does not treat as line haul any of the line east of Flat Top. The larger part of the coal is assembled at points west of Flat Top, but there is a line operation westbound from Flat Top for a small tonnage of coal.

The line from Norton and Bluefield is a Clinch Valley operating district and does not take in either the Pocahontas or Tug River or Thacker coal districts.

I gave some figures for 159 trains carrying average (3007) train rating and the average train tonnage. Those two figures were gross tons. Those trains moved during the month of December, 1932, 159 slow freight trains from Portsmouth, Ohio, for Columbus, Ohio. The tons I gave as having been lost for certain specified reasons were gross tons, gross figures for the entire lot of trains. Reducing them to averages per train or translating the other averages per train into gross figures, so that the two can be compared, could be readily done by dividing the tonnage lost by the total number of trains. About 40 tons were lost on account of lack of tonnage. These figures are to illustrate what happened where you have sufficient tonnage to fill out your trains in [fol. 2705] the absence of other difficulties. (3008) I mentioned that occasionally on Sundays and Mondays we had lack of tonnage to make a full train from Portsmouth to Columbus. That is a heavy tonnage line, as far as coal is concerned, and even on such a line you sometimes fall below your rating on account of lack of tonnage available. In this particular case it is due to the practice of closing down our hump operations at Portsmouth on Mondays because of lack of coal to justify the continued operation and to move the tonnage that is left over when the operation of the hump is stopped, as otherwise that particular coal would be unreasonably delayed. That is not due to the interruption of normal operations (3009) over the week-end, but lack of lading on Sundays, so that they run out of loads.

Referring to the 600 tons per train loss on account of balanced power, that is not due to a standard practice on our line on that division or to the unbalanced power requirements, but to accumulation of empty cars at Columbus beyond our ability to hold there and the necessity of moving some of them away. That would affect the tonnage on the northbound trains because in order to provide power at Columbus we have to move them under-loaded in the westerly direction, we have to get the engines to Columbus to clean out the empties. The weather is due to conditions which impair the effectiveness of the operation, and that includes rain as well as temperature; that is a fair state-[fol. 2706] ment, I think, that this is all due to temperature.

(3010) Mr. Davenport referred to diffusion in the origin districts as well as after the coal moves part way toward the consuming territory. I am talking about the line haul. In

the case of our trains moving from the coal field district, Eckman to Williamson, we have to start those trains out of Eckman leaving sufficient room to pick up enroute between Eckman and Williamson. The same thing happens when you drop off tonnage in some cases. As I understand the exhibit presented by the Wheeling & Lake Erie, you come to the point where you do not have sufficient tonnage to run solid coal trains. Therefore, your rating for solid coal trains does not mean anything. I have no objection to your calling it either "lack of tonnage offered" or "diffusion."

(3011) I don't think time is reflected in any of the ratings for coal trains on the Norfolk & Western Railroad. As to whether I recognize the fact that speaking theoretically as an engineer I could not fix train rating on a given district without knowing how much time was to be allowed to get the train over the district—I don't think that situation would ever arise, at least it has not in my experience in fixing ratings for coal trains. As to its being theoretically true, as to the rating of trains, if one of my superior officers asked me to figure out a rating from A to B and gave me all of the information except the time that the train was supposed to [fol. 2707] make from A to B, so that I would be short one of the necessary elements, inasmuch as an engine can run faster with a smaller train behind it than it can with a larger train—I can conceive of conditions under which the ratings might not be fixed to the limit of the capacity of an engine to move over the ruling grade because of the (3012) necessity for keeping the speed of the train up to a certain figure, but that condition does not arise with us.

It could be that over some particular piece of road where coal moves it would in fact move in other than heavy tonnage trains, and the rating of such trains would be affected by the fact that they were moving on a time schedule. Our trains would move on time schedules and coal is handled in them.

(3013) Having been handed a copy of Norfolk & Western Time Table No. 36, effective May 18, 1930, and asked the significance of the dual meaning of engines shown for example from Bristol to Abbington or Glade Spring to Pulaski under the heading "slow" and "time," in the column headed "Class of Service," I would say we have two classes of

ratings established on the district which you mention. The time freight rating is set up for our fast merchandise freight trains, and the other one for our full tonnage trains. Time is reflected to the extent that ratings for fast freight are made less than the capacity of the engine to move at a slower [fol. 2708] speed, but the rating for the slow freight train is not in our case based on the time required in movement over the division. If that train had to get over the division at the speed of the fast freight train, you would have a lesser train rating, and in that sense time (3014) is reflected, but you don't have to do it.

By Mr. Hall:

Referring to the two small divisions referred to by Mr. Ballard, Glade Spring and Bristol, we have no solid coal train movement on that section of line.

By Mr. Ballard:

We do publish one time rating and a slow rating on all districts where we have possible solid coal train movement. When I say that time is not reflected in Mr. Ackerman's formula, I mean there is no consideration given to the amount of (3015) time it takes to move a train on which he bases his calculations. That element is taken into consideration by the thousands tractive effort pound hour formula which I used for a set of studies in the Lake Cargo Coal Rate Case 1930. The question asked me in that case was: "Are gross tons of train directly related to energy expended in moving a given number of gross tons?" and the answer was no. The answer would be the same if a train was loaded to the rating.

(3016) I gave one example that I thought was clear of where the train is loaded up to the rating. You might take another instance, our operating district from Bluefield to [fol. 2709] Roanoke, Va., eastward from the coal fields, where the grade is very light. I also gave as an example one from Eckman to Williamson, and stated: "our grade line for westward movement is sharply descending for a considerable portion of the distance, and the adverse grade met with on any portion of the run is so slight that ratings for westbound movement are primarily controlled by the tonnage that can be handled on eastward movement." In this case for one, our rating from Eckman to Williamson could be higher than it is. (3017) I mean for the locomotives actually

in use it could be higher, because the controlling movement is east from Williamson, and we think it is better operation to not load the train so heavy westward in case of some trains and then run light engines to balance the power. In other words, you have a certain number of gross tons moving from Williamson to Eckman and a certain number moving from Eckman to Williamson, and the former determines the number of locomotives necessary to be operated between the two points, and that factor having been so determined, you might just as well distribute the westbound gross tons among all those locomotives.

I understand the formula does not give additional weight to the conditions on a given piece of road in proportion to the volume of tonnage moving over it. (3018) That is what I mean to say when I say it does not reflect density of traffic, and in the case of this illustration the number of [fol. 2710] trains necessary to move a given tonnage over the line, Portsmouth to Columbus, is greater than over the line Williamson to Portsmouth, and Mr. Ackerman's theory gives no consideration to that fact. In other words, under his formula the one average mile from Portsmouth to Columbus has exactly the same influence in the final result as one average mile between any other two points covered by the study.

I don't think the amount of traffic would be controlling in any case in determining what locomotive is to be used on a given piece of road, except to be sure that you did not use a locomotive to a greater capacity than the volume of traffic you have to move, provided you had a small locomotive available. In that sense volume of traffic is reflected in the formula to a very limited extent, I think.

In speaking of the failure of the formula to reflect refinements of locomotive construction, I illustrated that point by reference to the use of large tanks, meaning tanks in the locomotive tender (3019), as affecting the time on the road, by reason of avoiding stops to take water. I do not think the formula reflects time any way, in the sense of time on the road. It is an illustration of how time on the road may be varied by different operating arrangements.

Empty return, I have pointed out is not reflected either [fol. 2711] in the case of cars or locomotives. I spoke of a ratio of empty to loaded mileage of 73.15 between Williamson, W. Va., and Bluefield, W. Va., including connecting

branches. 73.15 is the average for both direction movements. [fol. 2712] I stated for the year 1932. I don't have the corresponding figure for the section of line next west of Williamson; I imagine it would be pretty close to 98 per cent; that is the section, Williamson to Portsmouth. As to Portsmouth and Columbus, that would probably be about 98 per cent. I would not know about the line from Columbus to Cleveland.

Referring to my criticism of the inclusion of the section of line from Norton to Finney at page 2 of Exhibit 321, that line is shown on the chart. It was shown on my chart in the Lake Cargo Case, but the figures Mr. Ackerman has used were not shown by me in the Lake Cargo Case. I don't recall that I showed any figures for that line. The same is true for the line from Finney to Richlands. The line was shown on the chart, but I did not furnish the statement. My recomputation of the average for this exhibit, 17.23 excludes the two pieces of line I just referred to. That accounts for the difference only in part. The other changes contributing to the difference are the use of erroneous tractive power figures for the line, Cliff to Flat Top, Pocahontas to Flat Top, and Flat Top to Eckman; those figures appear in Column E. In Column E I used 90,000 ponds. Those are electric locomotives. I distinguish between their running power and their starting power. We have used their one hour rating figure. The tractive power is calculated on basis of one hour rating. That is what the 90,000 pounds is. The 123,036 is an average of the tractive power of [fol. 2713] steam locomotives and electric locomotives, probably based on the starting effort of the electric locomotive. I am not sure. That is Mr. Ackerman's own calculation. They are the only changes I made in the figure, I think.

The Interstate Commerce Commission formula for computing tractive power is shown in the annual report required from railroads. I do not think the tractive power shown in Mr. Ackerman's Exhibit 325 of certain Norfolk & Western locomotives is figured in the manner required by the Interstate Commerce Commission's formula. The formula appears in the form of annual report required by the Commission, all railroads, in blank form. I don't know when that went into effect; it has been in effect several years. I would not think it would be possible that Mr.

Ackerman has made the same mistake in figuring tractive power with all the other railroads in this case.

The tractive power rating of our Class Z engines is 75,830; low pressure Y-3, 101,470; high pressure Y-3, 114,154. This question would not involve the electric engines. I don't have the exact figure for the Y-4; it would be approximately the same as the Y-3. If there are others that you would like to have I can furnish those after the hearing closes this evening, before I leave today.

There have been some changes in operation and some increases in ratings since my chart was made in the Lake Cargo Case, as follows: the present rating from Wilco to Tug Fork Junction, 10,000 tons; present rating from Eckman to Williason, 10,000 tons; present rating William-
[fol. 2714] son to Portsmouth, 12,000 tons; present rating Portsmouth to Columbus, 10,000 tons. Those ratings are not applicable to the same locomotives in each case. The changes in the tractive power were Wilco to Tug Fork Junction, 101,470, the same (101,470) from Eckman to Williamson; tractive power Williamson to Portsmouth, 114,154; same (114,154) from Portsmouth to Columbus. Those are the only changes in tonnage ratings. There were no other operating changes since the Lake Cargo Case that would affect Mr. Ackerman's calculations.

I cannot explain the theoretical difference between the Commission's tractive effort formula and the one used to obtain the tractive effort figures shown on Exhibit No. 325 for the Norfolk & Western. It is quite an involved formula in each case and I don't have it with me. I could not undertake to state the difference in the effects of the two formulæ without having the formulæ before me. The formulæ purported to measure the same thing.

[fol. 2715] By Mr. Ballard:

Q. Mr. Conrad, I hand you a printed page entitled, "Electric Locomotive Data Norfolk & Western Railway." It purports to be published by the Westinghouse Electric & Manufacturing Company, and I ask you whether the figure in the left-hand column of figures, 92,500 pounds, which is checked in pencil is correct?

[fol. 2716] This advertisement of the Westinghouse Electric & Manufacturing Company does not belong to the Norfolk & Western and I have never seen it before. It appears

to be an advertisement of the Westinghouse Electric & Manufacturing Company. This appears to be a photograph of a locomotive of the type we have in service. I don't have sufficient data available with me to say that this is a Norfolk & Western locomotive. As to the statistical matter, I don't have in mind all of those items, points of description of these electric locomotives as shown. I don't see how I could be expected to answer the question whether it is a Norfolk & Western type of locomotive. I assume that it is a Norfolk & Western locomotive. These are Norfolk & Western locomotives, the one on the first sheet would be Class L-C-1, and [fol. 2717] the one on the second sheet Class L-C-2.

Mr. Ballard: I will offer this as Exhibit No. 411 and ask leave to withdraw the original and furnish copies later, the whole thing, letter and pictures.

(Exhibit No. 411, witness Conrad, received in evidence, and temporarily withdrawn to be furnished later.)

(In response to question by Mr. Gutheim):

I don't know whether the tractive effort that the Interstate Commerce Commission annual report requires to be recorded with respect to each locomotive is the tractive effort at the drawbar as distinguished from the tractive effort generated, but I do know that in following out the formula of the Commission the tractive power figures for our engines are different than what they were at the time of the Lake Cargo Coal Case.

I was a witness for the Norfolk & Western Railway Company in the proceedings before the Interstate Commerce Commission styled No. 23842, "State Corporation of Virginia, et al., vs. Norfolk & Western Railway Company". It is my recollection that I testified in that proceeding to the following effect: (report of Commission, Division V, sheet 20) "Mallet locomotives which haul 10,000 tons Eckman to Williamson and on to Portsmouth will handle only 4,000 tons eastbound between Williamson and Welch, [fol. 2718] where the ruling grade is .6 per cent, and only 3,000 tons east of that point to Eckman against a grade of 1.6 per cent". The reason that that locomotive that will handle 10,000 tons from Eckman to Williamson and on to Portsmouth will handle the reduced tonnages only on the lines going east, is because of the grade conditions eastward. There is no other reason why that same locomotive

would handle the lesser number of tons going eastward. There is no specified running time for the locomotive between Williamson and Welch and between Welch and Eckman. As I stated here, on the westbound the engine would handle more than 10,000 tons. Eastbound we have determined by actual tests that the ratings which we have set up represent the capacity of the locomotive to handle against the grades. When we set up that test eastbound for the purpose of determining that tonnage, no other conditions of operation are prescribed for the engine going between those two points other than the maintenance of the speed on the ruling grade that would not interfere with the general operations. It is also my recollection that I testified substantially to the following effect: "From Bluefield to Roanoke there is a grade against eastward movement of 1 per cent for a distance of about 7 miles from Walton to Christiansburg, on which pusher service is operated. Mallet locomotive which hauls 10,000 tons from Williamson to Portsmouth handles 3,300 tons over this grade." The reason for the lesser tonnage handled over the grade [fol. 2719] from Walton to Chirstiansburg, by the same engine that handles the 10,000 tons on the other portion of the line is the same reason I have given previously with respect to the Eckman to Williamson comparison with Williamson to Welch. With respect to the language on sheet 21 of the report: "Between Roanoke and Crewe the same type of Mallet locomotive handling 10,000 tons from Williamson to Portsmouth handles 2,800 tons," I would say the same reasons I have just given are the cause for the lesser tonnage being handled between Roanoke and Crewe as compared with that from Williamson to Portsmouth. With reference to the language on the same sheet 21 of that report: "Between Roanoke and Shenandoah adverse grades range up to 1.6 per cent and a heavy Mallet engine handles 2,700 tons, whereas from Williamson to Portsmouth it handles 10,000 tons," I would say the lesser tonnage was handled almost entirely for the same reasons I have just given previously. There might be some slight consideration of other elements, though, in the Shenandoah district. In that district we do not handle any solid coal trains and all our trains operate on schedule and are set up to meet connections at junction points. That is, it is a scheduled movement and carries less tonnage. I think it is true that I

testified on sheet 22 of that report substantially to the effect: "Going from Walton to Bristol grades range up to 1.34 per cent against the movement. Large Mallet locomotives operating on this line handle 2,200 tons from Radford [fol. 2720] to Pulaski and 2,100 tons beyond to Bristol. This locomotive handles 10,000 tons westward from Williamson." The reason for the lighter tonnages of the same engine on the line from Radford to Pulaski and beyond Pulaski to Bristol is the same as I have stated heretofore.

Redirect examination.

By Mr. M. Carter Hall:

With reference to my statement in the beginning that in ordinary railroad practice train ratings were not used as a means of measuring relative operation performance, there is nothing I have said in answer to Mr. Gutheim's questions and what I previously said that is in conflict on this point. Mr. Gutheim asked me the reason for the ratings and I stated the reason for the ratings. I also gave reference to those ratings in the case to which he refers and followed that testimony with the showing of the speed elements that entered into the operations on the various districts. That is in the case of the State Corporation Commission of Virginia. In that same case I put in certain figures which included the time element. My testimony, from a comparative standpoint, was limited to those particular factors, that is the average gross ton mile per thousand tractive effort pounds. (3036)

[fol. 2721] J. H. Bauer was called as a witness, and having been duly sworn, testified as follows:

(3036) Direct examination.

By Mr. Day:

My name is J. H. Bauer, Coal Freight Agent, C., C., C. & St. L. Railway, 230 East 9th St., Cincinnati, Ohio. I have been connected with the traffic department of the

Big Four Railroad for 22 years, and the past seven months I have been Coal Freight Agent. Prior to that time I was Assistant General Freight Agent and Chief Agent and Chief of Tariff Bureau. During part of that time I was Assistant General (3037) Freight Agent I was in charge of coal traffic for the Big Four. The Big Four serves a number of coal mining groups in Indiana and Illinois, all of the groups in Indiana except the Boonville; the Southern Illinois, Springfield and Danville groups in Illinois; and we have one mine in Peoria County.

As Mr. Davenport has already shown or explained, the movement of coal from Indiana mines to the destination territory involved in Docket 23922 is relatively small. I agree with the testimony of Mr. Matthews and Mr. Washer that rates within Indiana and from Indiana to Illinois reflect the influence of the depressed rates from Southern Illinois to Chicago. The general level of rates from Illinois is the lowest of which I have any knowledge, and as explained by Mr. Washer, the rates to Central Illinois points reflect the influence of the depressed rates to Chicago. In turn the (3038) rate from Indiana mines to Cen- [fol. 2722] tral Illinois destinations must necessarily be maintained at a correspondingly low level if Indiana producers are to be in position to compete with mines in Illinois.

Cross-examination.

By Mr. Ballard:

(3039) By my statement with respect to the influence of the Chicago rates on the Indiana-Illinois rate level, I mean that the interstate and intrastate rates fixed by the Interstate Commerce Commission in that territory in Docket No. 23922 and in Docket 23130 are less than maximum reasonable rates.

Testimony Taken at Columbus, Ohio, February 16, 1933

J. E. DAVENPORT, was recalled and having been previously sworn, testified as follows:

Cross-examination.

By Mr. Ballard:

(3039) In the process of making train ratings, ordinarily you can sit down with a pencil and a piece of paper and profile showing the grades and curves involved in the territory, making calculation and get within a very close figure of the train ratings that is to be applied to the territory involved. After having gone that far you usually go out and try it out in actual practice. That, of course, is in developing the maximum rating for the terri- [fol. 2723] tory you are talking about. The information that you have before you when you make your calculation is the profile of the road, the grades, the profile including curves as well as grades. The profile will give you the (3040) length of the grade involved, of course, and then the next thing you want in connection with the train is some information about the average weight cars that are going to move in the train. You have got to have some figure of that nature in order to apply the resistance figure to the train. In addition to that you want your tractive effort of the locomotive from which you calculate your drawbar pull. As I recall it, that is about all. It has been a long time since I worked out any tonnage ratings, but that is about all the dope you need.

To calculate the drawbar pull from the tractive effort, you subtract the frictional resistances that are used by the locomotive in moving itself from the tractive effort to get the drawbar pull. Part of the frictional resistances are constant, and part of them variable, depending upon speed. The tender and the engine truck and trailer resistances we always consider the same as car resistances, and then the frictional resistances in connection with the cylinder friction is a constant figure that, as I recall it,

we apply the weight on the drivers. It is a component of those two figures that represents the work that is lost between tractive effort and drawbar. I can't give you the details of those figures, what they are, because I (3041) [fol. 2724] can't carry them in my head. Part of the frictional loss is constant and part is variable; that is, part of it can be termed constant. In order to compute the variable element in the frictional resistance you have to have some information as to the speed at which the locomotive is going to operate, and you have to have information about the weight, of course, of the pieces of the locomotive that go to make up those two parts.

Having gotten this calculated figure, the actual test on the road of which I spoke consists of maybe taking a dynamometer car, building up a train to the tonnage you have calculated previous to making the road test, attaching to this train a locomotive and operating the locomotive over this stretch of track or division or section of a division and making observations as to the operation of the locomotive and the (3042) operation of the train over this stretch of track to see whether or not you get the figure correctly, whether you can add to it or have overdone it. A dynamometer car is a locomotive test car, equipped with springs,—a machine for measuring the drawbar pull of the locomotive. It is ordinarily coupled in between the tender and the first car. This thing we are talking about, that is, in connection with the tonnage ratings, you couple it behind the locomotive. We do not couple anything between the tender and the locomotive. Asked if that dynamometer car has some sort of dial on it from which readings can be taken as to tension, or weight in pounds, it measures the pull and anything you want to measure, in pounds or kilograms or any other unit of weight, and it is identical with the ordinary platform [fol. 2725] scale when you get on it and weigh yourself. It is the pull measured and the pull recorded as indicated. When you find out whether you have to shade your theoretical figure or whether you can better it by this actual test, that is what I would call the first step. Of course it is done in various and sundry ways all over the

country. I am talking about the practice of my own railroad. You have established a figure to shoot at and then actual practice tells you whether or not that figure is going to carry through. That is, after the first field tests, there are possibly later adjustments based on actual experience. Sometimes the figure will hold and sometimes it won't.

Q. You gave some assembling distances in the Ohio Number 8 field, 4.4 miles for the Wheeling, 43.4 for the New York Central and 18.1 for the Pennsylvania. Are there other variations in assembling mileage in this territory that you can state?

A. You mean any other railroad that has assembling service there and what their mileage is? I don't know Mr. Ballard. There are other railroads there but I don't know what their mileage is. I was using that as an example to show that there is a difference in mileage in the assembly service and I happen to know those three in my head. I am not familiar with the Cambridge District. I had not touched it at all. I do not know of any in the Pittsburgh District. I know one in the Central Pennsylvania District.

I think I heard Mr. Heinisch's testimony when he described this 43.4 mile New York Central assembling haul as so-called assembly service. I remember that he testified to something of that nature. The assembly point to [fol. 2726] which this distance is computed is Minerva. The distance from the last mine at which the assembly crew picks up cars to Minerva is in my direct testimony. You can get that from my direct testimony because I quoted the figure in the direct testimony from Dillonvale to the mine, and Dillonvale is the southermost point. I gave the distance from there to the last mine as about 33 miles, approximately. (3045) That 33 miles of train movement by an assembly crew is in the direction of the destination. If the assembling operation which is performed at Minerva happened to be performed at or near the last mine, the assembly haul would be reduced by that 33 miles and the line haul would be increased; and Mr. Ackerman's tractive effort figure for road haul would be increased. I do

not mean it would be changed. I mean it would be increased. I mean by that that the engine performance for this 33 miles is less favorable than the engine performance beyond Minerva.

I have the factors all worked out, and that is what I was looking for, but I don't know whether I can put my finger on it now. Suppose I be allowed to find that and put it in before the day is over. Will that be good enough? I have it all worked out by moving the assembly points from Minerva to Bergholz, which is on the northern rim of the middle district. I will give you the answer working according to Mr. Ackerman's formula from that point to Cleveland—to some one destination to show you what the [fol. 2727] comparison is.

(3046) By Mr. Hall:

Before the war there was assembly at Bergholz. I think it is a correct statement that our present operation is because we thought it was more efficient than assembling at Bergholz.

(In response to questions by Mr. Ballard): The figure I gave representing the number of joint routes per destination in Ohio and in Indiana and Illinois was not based on the routes shown in the tabulations on the basis of the locomotive numbers charts; it was based on the routes shown on the detail sheets of Mr. Ackerman's exhibits, as I recall it. In other words, we took each one, and if there were two railroads we called it a multiple-line route and if it was one railroad a single line route, etc., off of his detail figures. I think in my testimony I did not make any difference between the two and three-line routes. It was worked up separately, but I don't think I put it in that way. If Ohio Number 8 is the right number, I used those destinations that were used in Mr. Ackerman's testimony in reducing (3047) it to a figure per destination. I used 15 separate destinations in Indiana and Illinois. You can get them off of Mr. Ackerman's exhibit. I haven't them right in front of me.

The basis for the statement that a third defect in Mr. Ackerman's formula is that he erroneously assumes a

solid coal train, is the fact that these maximum ratings that apply in many of these territories can only be [fol. 2728] reached by securing trains that are solid coal trains. If you do not have solid coal trains you have so many cars in the train to reach the tonnage involved that it would be unsafe to operate that many cars in a train. That is the first assumption, we will say. The second assumption is possibly an assumption on my part to the effect that that is the stand that Mr. Ackerman took in the Eastern case, and as I view this case and that case, his operations are identical in respect to those phases. His tonnage rating and his tractive effort figures for any individual section is all the same in the two cases, and in that case he was very emphatic and criticised me very severely because I had not (3048) used solid coal trains in the study which I presented. If you had traffic available that loaded as heavily as coal, the effect would be the same as if it were coal. When I say that on many of these divisions the ratings cannot be reached except with solid coal trains, I mean that coal is the only traffic that, as a practical matter, might be available on those divisions up to that weight.

To repeat my seventh criticism of the Ackerman formula, the Ackerman theory adopts tractive power as the unit of comparison. Tractive power as used by Mr. Ackerman is not the unit actually used nor the proper characterization of the force or energy which is actually used in hauling a train load of bituminous coal. The main thought I had there was the distinction between tractive power and drawbar pull that I explained in connection [fol. 2729] with my description of how I made train ratings. As to the eighth criticism (3049), under the Ackerman theory, tractive power is apparently constant. The fact is to the contrary. Tractive power, as well as drawbar pull, varies as to speed and grade in a variable ratio under different locomotive designs. In a way that also relates to the variable adjustment factor which I use in translating tractive power into drawbar pull, and in a way not. In reaching the calculations to get this tonnage rating, we use the characteristics of an individual engine. Now we finally, by the use of those characteristics, arrived

at a figure that we call a drawbar pull as differentiated from tractive power. On some other locomotive we follow the same procedure. The difference in locomotives A and B, that is, the characteristics of locomotives A and B are different, and in that difference you get a variation and percentage change of drawbar pull to tractive power throughout the range of performance of those two locomotives. Conservatively speaking, I could pick a speed in the variation between drawbar pull of two locomotives whose tractive effort was the same. It would be easy to find 100 per cent. As to giving an illustration with a number of a locomotive and the tractive power and the drawbar pull (3050)—you are asking me to give you a lot of detail that is, of course, not available. I refer to—and I am sure your witness will support my statement—a modern [fol. 2730] Pacific passenger locomotive with a tractive effort of 50,000 pounds, driving wheels 79 inches. Take this H-6 locomotive that Mr. Ackerman talks about in this case, which is a Mikado type of locomotive, driving wheels 63 inches, tractive effort 54,000 pounds. Operate those engines at 45 miles an hour and the different drawbar pull between them will be 100 percent. We did not start the discussion by specifically saying that we were dealing with the engines in this case. I was simply taking an example of what this thing means, and I took a wide variation.

Regarding criticism Number 11, under the Ackerman theory gross tons in train are not directly related to energy expended in moving a given number of gross tons. (3051) I don't know any better way that I can explain it than I explained it in the direct testimony, wherein I said: "This adjustment factor"—after having previously said that Ackerman had called this item to our attention by referring to car factors—"this adjustment factor is used by the carriers to equalize the well-known relationship which exists between the resistance to haulage of cars and the gross actual weight of those cars." Now to take another example, where the variation is large and it is easier to see and not assume that that example applies to these solid coal trains or to these coal trains in this case, it takes about 7 pounds of drawbar pull to overcome the resistance to friction of 1 ton in an empty car, and it takes about 3 pounds of drawbar pull to overcome that ton of weight in

[fol. 2731] a loaded car of 70 ton weight. In other words, the drawbar pull necessary to move that ton of weight that we are talking about varies from 3 to 7 pounds, dependent upon whether the ton is in a unit of 20 tons or 70 tons, on eight wheels, or whatever it is.

To restate criticism No. 17, the Ackerman theory of tractive power does not reflect the relative burdens of transportation on different railroads in (3052) proportion to the amounts expended in improvements, such as installation of large tanks, automatic stokers, coal pushers, etc. I had in mind their expense in connection with the equipment refinements, rolling stock and locomotives. The illustration I gave was the fact that I think I stated, that I felt that a great part of the present efficiency of locomotive operation could be traced to the change in the size of the tanks, and this change in size of tanks has been of such nature as to allow the locomotives to miss many former water stops, also to miss coal stops. I did not have in mind that a given locomotive with a given tractive power would perform differently, depending upon the size of the water tank. What I had in mind was that the tractive power of this engine would not change at all. With the same tractive power you would have different performance, depending upon the size of the water tank. If I use tractive power as a yardstick I would (3053) ignore possible operating conditions due to such element. Besides big water tanks there are locomotive stokers, locomotive [fol. 2732] valve pilots. The valve pilot is a little device put on a locomotive to teach an engineer how to run an engine. The New York Central has some six hundred locomotives equipped with them.

The tractive power of the Mikado type H-6 locomotive of the New York Central Railroad is 54,720 pounds. The drawbar pull exerted by that engine at zero speed on tangent level tracks is 51,515 pounds. One was tractive effort and the other was drawbar pull. You understand, Mr. Ballard, in talking about these things it is common practice to talk about (3054) tractive effort at starting, and that is about the only time you ever talk about tractive effort. When you start talking about drawbar pull

you have to relate it to the speed, grade, etc., involved, because that is the useful animal that we use.

The 1000 cars on which I figured my empty mileage was a thousand cars that we used in the Eastern case and they moved from the Central Pennsylvania coal territory into Northern New York, into that general territory, and we followed those cars and developed the empty mileage and used them as an example of what empty mileage we have to make, developing 92 percent of the loaded mileage as empty mileage, and that was one instance I know in my mind of an actual figure of empty car mileage, and I reached up in the air and grabbed it. That illustrates the [fol. 2733] problem, that is all; it does not throw any light on the facts in this case. My point is it takes more work on tangent level tracks to pull the empty part of the car than it does to pull the part of the car for which we get paid—the load.

Another item is that the Ackerman formula does not measure the work required to be performed to get the equipment back to the loading point. (3055) The statement that return empty haul is 92 percent of the going loaded haul, was in the case of those 1000 cars on the New York Central. Similar studies have been made on the B. & O. and the Pennsylvania and they found higher figures, as I recall.

Regarding the statement of tonnages of coal moving from Indiana origin districts for 1931 and 1932, the tonnages I gave were tonnages to the one destination of Peoria, and second, tonnages to Illinois as a state except Peoria, Chicago and the Chicago district, St. Louis, East St. Louis and the Tri-Cities. Those figures do not indicate anything but a movement of coal back and forth. The picture I gave out of those figures is that it shows the heavy movement of coal from the Illinois fields north and a rather light movement of coal from the Indiana fields west. I can't see that I can draw any transportation (3056) conditions simply out of the movement of coal, because there is a lot of other things moving in that territory east and west, north and south, besides coal. If that was the only thing that moved, I would rather own a railroad that is [fol. 2734] moving coal north and south. As to the Indiana figures, which gave the impression that the move-

ment was small in volume, disclosing superior or inferior transportation conditions, as I have just stated, it is rather difficult to draw a conclusion as to transportation conditions when you are only talking about one commodity and there are hundreds of commodities that move. I would have to know about all the traffic. I don't know how the other traffic moves in the territory involved. You might have some very heavy east and westbound movements.

Regarding my averages by routes from the Ackerman figures of 16.53 for Ohio and 15.72 for Indiana and Illinois (3057), we computed those figures from the detailed figures of Mr. Ackerman. In other words, we do not make any changes in his figures at all. We simply computed his Exhibits No. 266 and 267 by routes instead of pieces of routes. We used all of the routes shown in the detail of the exhibit from origin to destination points. I was afraid to use his face stuff generally when I was working with the boys on that stuff, so I went back to his detail to be sure of getting it all.

Mr. Ballard: Let the record show that Mr. Hall and I agree that the routes employed in making the averages about which I inquire are the routes shown on the faces of the locomotive charts. I am not talking about the figures used in the arithmetic, I am just talking about the identification of the routes?

[fol. 2735] Mr. M. Carter Hall: That is correct.

(Narrative continued:) It is correct that the method of averaging employed by Mr. Ackerman produces an Ohio figure of 15.92 pounds and an Illinois-Indiana figure of 16.16 pounds, and my method produces an Ohio figure of 16.53 and an Indiana-Illinois figure of 15.72, and that the differences between these two figures are what I intended when I said that my method produced a diametrically opposite result from his method (3058), with the limitations that I expressed at the time I made that statement. When I said the results are diametrically opposite, I simply meant in one case Ohio was slightly over and in the other case slightly under, a matter of about 6 percent difference, as I recall, between the two methods. We simply throw it out to show the Commission the gymnastics that these figures can be put through to get some answer. There is no method any good. I don't hold mine as superior to Mr. Ackerman's;

there is no superiority in things when neither one of them is any good. That is the stand I take. (3059) You can't even move a ton of coal over the 266 routes as shown by Mr. Ackerman, therefore, his mathematics are absolutely off the bat. There is nothing practical about it at all, so therefore, if you take these things that are of no value and want my opinion as to which is the best way to get the answer, I would say that as between those two ways, if there is any value in it at all, the answer by through routes is of more [fol. 2736] value than the answer obtained by taking short pieces of routes.

Mr. M. Carter Hall: You don't mean Mr. Davenport's method because I don't understand he has any method.

Mr. Ballard: There is no use quibbling. I am simply trying to have him understand my question and to get an answer. I am not trying to attribute any theory to him.

As I told you before, I don't think either one is any good and I haven't given any particular thought to what they would do, but I do know you can't take a ton of coal and move it over the routes shown by Mr. Ackerman's method and get it home. As to that being an epitome of my criticism—that's enough for me. If you can't move a ton of coal the way it is supposed to be moved I can't see any value in the method at all. As to whether I have considered the relative merits of the two mathematical processes as mathematical processes, I will have to say that I have considered the processes, because in the Eastern case we did not have any of those pieces of routes in front of us, and when we get into this case and we find these pieces of routes it looks like something new and we have got to go into it, if possible, to find out what it is about, what it means, what it is for and where it is going, so that I have given some consideration to the arithmetical processes involved, but as I view the whole thing, the big difficulty is trying to draw all this stuff down to one figure, because when you get that figure I can't see that it means anything. We didn't do so much of that in the Eastbound case at all. In fact what was [fol. 2737] done of it I didn't know anything about it until months afterwards, but in this case I find we have drawn this stuff down in one piece. To a degree, I have considered the relative merits of drawing it into one figure by one mathematical process as against another.

Q. What I am trying to ask you is this: In expressing the view that your mathematical process is preferable to Mr. Ackerman's or to ours, have you considered the fortuitous effect on your process of the inclusion or exclusion of destinations?

A. If by that you mean have I taken those figures of Mr. Ackerman's and worked them out by leaving out certain destinations or adding in some other destinations, the answer is no, I haven't done that.

Q. You see, do you not, from the question I have asked, that the route method could be made to produce almost any predetermined result by judicious selection of destinations, whereas that is not true of the piece-of-track method?

A. In my previous answer I told you that I had not taken the route method and attempted to get any different answers or to find out what would happen to the answer by adding or eliminating destinations, but in my direct testimony I have called attention to what does happen by the piece-of-track method, particularly in Indiana and Illinois, where you simply eliminate one destination from the fifteen destinations picked in the case.

Mr. M. Carter Hall: That is Peoria, you mean?

The Witness: That is Peoria.

By Mr. Ballard:

Q. Please repeat the Peoria figure that you gave. Did you recompute the entire Indiana-Illinois figure as a result [fol. 2738] of the Peoria elimination, or did you simply recompute the route figure?

A. I took 267, Ackerman's figure and took out those little pieces from his detail from Decatur to Peoria on the Pennsylvania and to Springfield and from Bloomington to Peoria on the New York Central, took those little tonnage rating miles and tractive power miles out of his tonnages figures and used this division to get the new answer, and his whole calculation, only taking out those three little sections of track. That is the only thing I did with the exception of correcting that one 50 mile error which he made, which was simply a typographical error, though the multiplications were wrong. He showed the distance right on one place and wrong in the other. That is the only change I made in his exhibit.

In Exhibit No. 267, Item No. 8, Bloomington to Peoria was taken out, Item No. 6, Urbana to Champaign, 51.8 miles was changed to 2.1. Under the Pennsylvania Railroad section Item 4, Decatur to Peoria was eliminated; under the Illinois Central section Item 5, Decatur to Peoria was eliminated. That is all we did, took those little pieces out, and whatever the answer was given in the direct testimony we found. I don't recall what it was.

Q. Now isn't this true; If you had a given piece of territory described by boundaries, by geographical boundaries, and you studied every piece of track in that territory, the Ackerman method of making the average could produce only one result, whereas the route method could produce any one of an infinite number of results, depending upon how many destinations, and therefore how many routes you used?

[fol. 2739] A. If you took a given territory and used all the destinations and all the routes in it, you could not get but one answer for the route method and you could not get but one answer for the piece of route method. I don't see how in one case you can assume you are going to take all the territory and use all the destinations and then in the other case drop some of them. You are not comparing like things.

Q. In that illustration what do you mean when you say all the destinations, you mean every point in the area?

A. That is the way you worded your question—if you had a territory and you took all the destinations.

Q. No, I didn't.

A. And studied all the pieces of track.

Q. I didn't say anything about all destinations.

A. You said all pieces of track.

Q. That is right.

A. How can you have all pieces of track unless you get all the destinations in the territory involved?

By Mr. Ballard:

Q. I attempted to frame the question so as to exclude the elimination of destinations, and I assume a railroad area described by geographical boundaries, and the problem is to find out what the average locomotive conditions are in [fol. 2740] that area, and I don't want to raise any question

of whether the formula is valid or not, because I know you don't think it is, and we think it is.

A. Well, we are agreed on that.

Q. I just want to find out which of the average processes is proper and there are no routes and no destinations in any sense except in the sense that there are routes and destinations wherever there are railroads. There is simply an area with a web of railroads in it. If you take such an area and take each operating division or train rating district once in your average you will get a particular result which cannot be varied within the terms of that formula, whereas if you use the route method of average you can get, or I will put it this way, you will get varying results depending upon which points you treat as destinations and which points you treat as origins.

A. You start off, Mr. Ballard, by saying you are not going to have any destinations and then you want me to answer the (3065) question based on destinations. Let's agree that you can figure the thing the way you want to and I will do the same, and I am going to agree that either way I figure it, it is no good.

Q. I understand that, but one is no worse than the other?

A. When you want an opinion of how to do something that the answer is no good either way, it is hardlly worth while spending the time talking about it, I think. That is a hypothetical question you put up there, if you take all the [fol. 2741] routes to these so-called destinations in this territory.

Q. You mean to every point from every point?

A. Or you have to have some destinations to go to either way, and you have to stop, and when you do it is the destination, and when you run along these pieces of track every town you run by may be a destination.

Q. And also may be an origin?

A. It may be an origin there, too.

Q. So you answer is, if you took the route from every point to every point you get a particular result which you could not vary except by the exclusion of origins or destinations, but short of that you could vary it any way you wanted to, could you not?

A. My answer is that if you took this block of territory—first I have got to ask a question—are you going to have these origins in the block or out of the block?

Q. (3066) Everything is in the block—origins and destinations.

A. All right, we will take a group of towns, we will call them A, they are origins, and B, they are destinations. Those groups of A towns are connected to groups of B towns by a series of railroad tracks, something like the situation in New England, for example. We go to work and calculate the tractive power figure, according to Mr. Ackerman's dope, the pounds per ton to move by his method used in this case of cutting up little pieces of track, so you use only one piece of track once.

[fol. 2742] Q. And you use every piece?

A. And you use every piece. That is hypothetical question No. 1.

Mr. M. Carter Hall: Between the origins and destinations?

Mr. Ballard: No, no, in the area.

By Mr. Bull:

Q. In both directions, or only one direction?

A. That is too much for me.

By Mr. Ballard:

Q. Using every piece in one direction. I will state the question that I am trying to get to, and if you can't follow it I will stop there, because obviously it is a question of argument.

A. Then let's argue it on brief.

Q. Isn't it true in the case you cited, where you treat points "A" as origins and points "B" as destinations, you are getting one certain definite result by your process, and if (3067) you throw out A's or add them or throw out B's or add them you will get a different result?

A. You will get that from either process.

Q. In the other process the only way you could change the result is by omitting track, isn't it?

A. You mean Ackerman's method?

Q. Yes, the only way you can change his result is by leaving out a piece of track that is in the territory or putting in a piece of track that is not in the territory, which is contrary to the hypothesis?

A. You are trying to make a hypothesis that is so far [fol. 2743] from practical that it is silly. You can't take out a destination or put in one without taking out a piece of track or putting in one.

Q. Do you mean that?

A. Yes.

Q. Suppose it is an intermediate point right on the same track and you add that as a destination and put it in class "B"?

A. That is a destination.

Q. Just a minute—that is exactly the thing I was trying to get at. Under your process, if that is an intermediate point about a mile short of the destination you are already using, you use all of that route over again in your average?

A. Yes.

(3068) Q. Except one mile, whereas in the Ackerman method of averaging, the addition or subtraction of that point as a destination does not add or subtract a single piece of track in the average, so you can do anything you want by just dropping any destinations?

A. No, sir. In your example, speaking with regard to intermediate destinations you are right, but don't forget that the ton of coal that went to that intermediate destination stops at the intermediate destination and can't get up to the next destination on that same route. It is burned at this first place where it stops, and we are talking about this ton of coal we are going to move from the mine to [fol. 2744] these destinations.

Mr. Ballard: I was not talking about the ton of coal, I was attempting to test the mathematical process and nothing else, and your answer is satisfactory.

(Narrative continued: I did not hear Mr. Matthews' or Mr. Cochran's testimony.

As to whether I can define the geographical territory in 23130 in which the Commission fixed interstate and state rates by order, I would not attempt to find that out of my head without taking the report and reading it. You can do that. As I say, I was not in the case particularly and I have not been able to spend a great deal of time. As I understand the destination territory involved in 23130 it was practically the State of Illinois. To a large extent it

was on that assumption that my testimony of yesterday was based.

It is correct that for the purpose of illustrating what I regard as the unreliability of Mr. Ackerman's formula, I stated that the number of pounds of tractive effort required to move one gross ton one mile per mile of line as ascertained by that formula between Minerva and Brady Lake, Ohio, is different in the case of the New York Central and the Pennsylvania, both of which railroads run over the same track in the same direction. As to the piece of track from Minerva to Brady Lake being a train rating district on the New York Central, we don't have anything on our railroad particularly that we call train rating dis- [fol. 2745] tricts. It is a train rating district in the aspect that Mr. Ackerman has used it, because it is the helper territory in its entirety. A helper comes on at Minerva and cuts off at Brady Lake, and in that respect it is a train rating territory, because the helper is only running the necessary distance that is required to move the tonnage involved and the tonnage applies to the two-engine movement over that territory. The dotted line running from Minerva through Alliance to an un-named point is the line I am speaking of. That is the Pennsylvania Railroad over which the New York Central has trackage. The New York Central locomotive does not operate from Minerva to Marcy, or from Minerva to Collinwood or Berea. It operates to Rockport, which is about 36 miles north, approximately, Brady Lake—about half way between—that is a very wide figure. The train rating on the Pennsylvania Railroad that includes this piece of track, according to Mr. Ackerman's charts and according to the testimony of Mr. Triem—and you can thrash that out with him, he will be on the stand later—applies from Bayard to Ravenna. As I recall it, it is about three miles from Bayard to Minerva. I should think it is about two miles from Brady Lake to Ravenna. I am not sure of that distance.

Q. So in the case of one of these railroads you have the elements that are used in the Ackerman formula related to a piece of track that almost coincides with this trackage area and in the case of the other railroads you have a very much longer operation to which the train rating applies?

A. Mr. Ballard, The New York Central train rating on [fol. 2746] that piece of track applies from Minerva to Brady Lake because we would not put two engines on the train and cut one of them off at Brady Lake unless there was some reason for it. Insofar as this tonnage rating Ackerman has used is concerned, it does apply for that section of track. Put two engines on that piece of track, use the same tonnage rating and then cut one of them off at Brady Lake and the same train goes right through to Rockport with one engine. That rating is established for the district over the Pennsylvania, the helper district, where we have two engines hauling the train.

In recomputing the Virginia locomotive charge by adding pieces of line in Ohio necessary to reach destinations other than Cleveland, I don't remember whether that reduced the figure for the route from the Virginia district or districts to Cleveland, or raised it, but all I remember was that it changed it, and of course if it changed it, it changed it for reasons you have described, i. e., because the locomotive performance figure on the pieces of line that I added was lower than that obtained by the use of the Cleveland line.

Q. In cases like the C. & O. and the Norfolk & Western, where the conditions south of the Ohio River are superior to those in Ohio, the addition of the pieces of line necessary to reach the other Ohio destinations would have the opposite effect, would it not?

A. You mean if we took the C. & O. exhibits and added on this other destination stuff?

Q. It would raise the figure, wouldn't it? The reason I [fol. 2747] ask is this——

A. Figure it out and find out—I don't know.

Q. Doesn't it arise from the fact that the C. & O. conditions are superior to Ohio conditions?

A. It would seem so, but you can figure it out.

Q. So that those omissions that were made, if replaced throughout the exhibit would have produced a higher figure from the south, wouldn't they?

A. In the first place, Mr. Ballard, you are basing your whole argument on these little tips of Wheeling & Lake Erie effort which I simply called to your attention to show what would happen with the change of destination. Now, then your tractive effort of the Wheeling & Lake Erie happens to be the lowest of any of the four in the State

of Ohio, and if you are going to get a true picture of the whole situation you have to include some of those other fellows.

Q. But you recognize when dealing with figures it is sometimes proper to take a short cut if you don't do the other fellow an injustice. Here we were with these numerous studies on our hands, and you know there are a lot of them. If we wanted to we could have taken these locomotive routes from the south to each one of the Ohio destinations, just as we did the northern locomotives. We said to ourselves, if we take Cleveland alone and omit these Ohio figures necessary to reach the other destinations we will be getting a lower figure from the south than we would otherwise, and the one you picked out to illustrate what we [fol. 2748] did was perhaps the only one you could have picked out to show that the effect would be the reverse?

A. Your premise is all wrong. The only reason I picked that out was because the Wheeling & Lake Erie happens to be particularly involved in this case and I just thought—well, it is the easiest one to couple on to the New York Central situation. I had no reason, no thought about any of the rest of them at all. I can't say that it was by good fortune I stumbled on to the one route, and this had the effect of raising the figures instead of reducing them, because I haven't made the figures for any of the other routes and I am not interested enough to make them.

As to whether I said that the last column of exhibit 331 was nothing more than a different way of showing the fact that the ton mile earnings are lower from the Southern districts than from the Northern districts, I was not entirely misunderstood. I did not make the statement that the last column was identical with the percentages that would result if you used ton mile earnings. The statement I made was to the effect that due to the fact that the figures on tractive power in Column C varied only slightly as compared with the figures in column B, your distances, that when you threw those two things multiplied together into your rate the column C had very little effect, and the distance is [fol. 2749] the big thing that does have effect, and winds up over here in your last column under your percentages. It is not identical with my earnings per mile but it would be identical if the various items in Column C were the same.

(3076) Referring to Ackerman's locomotive charts, I

said there were 95 errors in mileage, and mileage was the first category. I haven't the information in shape so that I can state those errors. I want it understood, though, that his method of picking up pieces of track has resulted, naturally, in a great many erroneous mileages which might be called composite mileages. By that I mean, for example, if he started it on the Wheeling & Lake Erie exhibit at Dillonvale and went up to Rexford and he made an error there in that mileage and Rexford was the destination point, and then he starts to another destination beyond Rexford and that mileage is correct from Rexford on to Brewster, but instead of going back to Rexford he takes the incorrect mileage he used the first time and uses it the second time. In trying to find out how many errors there were in this thing I simply made marks on these spots as best I could, and there are 95 such instances of distances where he uses those distances in his calculations on his detail sheets. (3077) I am talking about locomotive performance charts, and only about those pieces of them where he has used New York Central Lines stuff. As to applying any limit of [fol. 2750] tolerance or treating one-tenth of a mile as an error, the thing is of so little importance that I did not even check them with the accurate mileage figures. By that I mean I did not check them with mileage figures down to one-tenth. I used a record that I had in my own office where the mileage was even miles and I checked that against Mr. Ackerman's figures, and when he came within one mile of my figure I called him all right. The record I had before me showing these distances in whole miles against which I made the check was a record secured from the Superintendent of Car Service at Buffalo where we have accumulated for the lines as a whole all these distances that go into making up wheel reports, and I had to pull off those mileages to find numbers for his record. Operating department distances are used by the railroads in reporting these car miles and train miles to the Interstate (3078) Commerce Commission.

Mr. Ballard: Mr. Examiner, I would like to ask the petitioning respondents to produce those figures.

Mr. Day: We are not in position to do that, Mr. Examiner.

Mr. Ballard: Either the documents against which the check was made or a transcription of the particular distances which they corrected.

Examiner Trezise: You would be satisfied with the operating mileages. That is what it is, isn't it, Mr. Davenport? [fol. 2751] The Witness: Yes, it is the operating mileages.

Mr. Ballard: Where corrections were made.

The Witness: It is just so much useless work, as I see it. It is of no value after you get them.

Mr. Day: We cannot agree to furnish them.

Examiner Trezise: Mr. Day says he will not furnish them.

(Narrative continued:) The next category of errors were tonnage ratings. There were 130 of those. If Mr. Ackerman had the tonnage rating on an H-2 engine erroneously, I counted that as an error every time he used that tonnage rating. I have gone to his detail exhibits and wherever there was an error in the facts as set down by him on his detail I made a little blue mark. (3079) I am only talking about the New York Central charts. I mean the tonnage where he shows from A to B so many miles, so much tonnage rating, so much tractive power—those are the only three items. If in that single line correction there was something wrong I made a mark. Of course if he had an error upstairs here when he added three lines together there would be something wrong in the addition and I did not count them in again in counting my errors. But of course when he starts out the way he worked in this case and adds these pieces on, he will have an H-10 locomotive hauling 5,000 tons six or eight times on one sheet, and [fol. 2752] those calculations finally go right on into some answer and I counted it each time it showed up hauling between these points in error. I checked the tonnage rating figures against the tonnage ratings obtained from the operating officials in charge of the properties involved all over. (3080) I went to each territory to get the tonnage rating, what class of engine Mr. Ackerman referred to for the territory involved. We do not carry that information generally in any one spot. I gathered it together in my office for this purpose. I went out and got it myself. I carried it around quite a while with me for the last month. I think it is around Columbus somewhere now.

Mr. Ballard: I would like to request the petitioners, Mr. Examiner, to produce either the documents from which these train ratings were checked or a transcription from those documents of the train ratings which they corrected.

Mr. Day: For the reasons given in Mr. Davenport's direct testimony the New York Central Lines will not furnish such information.

By Mr. Ballard:

Q. We are only talking about the New York Central, aren't we, Mr. Davenport?

A. That is all I am talking about.

(3081) Mr. Orcutt: To eliminate any talk about the Pennsylvania when you come to it, we will refuse for the same reasons, so it will save a little time.

[fol. 2753] Mr. Webber: I will say the same thing for the B. & O.

Mr. Hall: And that goes for the C. & O. and the Norfolk & Western.

(Narrative continued:) There are several more categories of errors. They were stated on the direct.

Mr. Ballard: May it be understood, Mr. Examiner, that we and the Wheeling & Lake Erie Railway request the petitioning respondents to produce for the record either the original documents from which these errors were checked or a transcription of the correct information from those documents in cases where errors were checked, and that the petitioning respondents, by counsel, refuse to furnish the information for the record.

Examiner Trezise: That goes to Mr. Ackerman's figures only?

Mr. Ballard: This refers to the errors of the classes described by Mr. Davenport in Mr. Ackerman's locomotive performance exhibits.

Examiner Trezise: Counsel can agree to that?

(3082) Mr. Day: We can agree that we will not furnish such information.

Mr. Ballard: And you will agree that I have asked for it?

Mr. Day: Yes.

Mr. Ballard: And with sufficient particularity so that it is understood?

[fol. 2754] Mr. Day: I don't know about that.

Mr. Orcutt: I will say it does not make any difference so far as we are concerned. I you stated it with minute particularity we would still refuse it, but your statement is so vague that if we were inclined to furnish it we would not know what to furnish.

Examiner Trezise: Then the parties do not agree?

Mr. Ballard: I understand your contention.

(Narrative continued:) The next category was errors of tractive effort. Those were checked basically from the locomotive classification book of the carriers. It shows the characteristics of each locomotive owned by the company. However, in addition to the locomotive classification book you have to have some information about the number of engines running into a territory, the number of engines running on a section of property, because under Mr. Ackerman's (3083) method he sometimes takes the tractive power of one engine and adds it to the tractive power of another engine to arrive at what he calls the average tractive power of two types of engines, so that in doing that, to do it accurately you should weigh the tractive power of each type based upon the number of engines either in service on that division or in service on that railroad, or on some such calculation, but the basic information is in the locomotive classification books.

[fol. 2755] Mr. Ballard: I request that the petitioning respondents produce the records from which these errors were checked or a transcription from the documents of the items necessary to make the corrections of the errors.

Examiner Trezise: And that relates to tractive power figures?

Mr. Ballard: That relates to this category tractive power figures.

Mr. Day: For the reasons stated in Mr. Davenport's direct testimony, defendants decline to accede to Mr. Ballard's request.

Mr. Orcutt: It will be considered Mr. Day speaks for the Pennsylvania.

Mr. Webber: And for the B. & O.

Mr. Hall: And for the C. & O. and the Norfolk & Western.

Mr. Ballard: In other words, I don't have to repeat this request for the other railroads, it is taken as applying to (3084) all the railroads.

Mr. M. Carter Hall: Having in mind there may be different conditions, different sources of information, different documents, different territories involved in each case.

Mr. Ballard: But waiving those distinctions and accepting this request as going for petitioning respondents?

Mr. Hall: As far as the production of information is con- [fol. 2756] cerned, we all stand on the same ground.

Mr. Ballard: But you admit that the request, if sufficient for the New York Central Lines, is sufficient for the other railroads?

Mr. M. Carter Hall: I just said subject to all differences in operations or books or records or places where they are or any other such differences involved in the checking of Mr. Ackerman's exhibits, all going to the point that the request is not made with sufficient definiteness for us to comply with it even if we wanted to do it.

(Narrative continued:) The next category of errors that I mentioned was what I call names of terminals. I did not count them. I ascertained them by noting that he was running our trains in yards where (3085) they do not run. As an illustration, he calls Paris a terminal for interchange on the St. Louis Division and the Cairo Division of the Big Four Railroad, and the interchange is Midland Yard, one and one-half miles from Paris. He calls it Paris. Therein possibly lies the base of some of his distance errors—I don't know. As to other such errors, I discovered five or six, seven or eight of them. I haven't the information right here at hand. I would have to check through all these charts. I don't think it is necessary. So far as his calculations are concerned, if you get the right mileage—well, I don't know, either—I can't make that statement. I am [fol. 2757] afraid it is not true. You ought to have the right name of the terminal. As to whether the name might affect the result, even though the mileage was correct, I would say no, but I think it is possible, in fact I know that some of his mileages are wrong because he is assuming a movement into a terminal which is not a proper movement. I reached that conclusion based upon the fact that his mile-

age is nearer correct, having one or two instances of that kind that I noticed—the indication was that that is where his mileage errors came from, so he did not have the right mileage and the wrong terminal. That is, there is an additional error besides the mileage error. I have stated the use of Paris as an interchange point as an example of that. There are a number of others. I think there are at least seven or eight. Those errors are on all of the charts, Ohio and Southern as well as Indiana and Illinois.

Mr. Ballard: Are you willing to furnish those, Mr. Day?

Mr. Day: No, I don't think so.

(Narrative continued:) Answering a question with respect to each of the Ackerman locomotive performance charts that shows any of the New York Central Railroad, whether there are any errors of the kind just described by you, that is to say, the designation of an erroneous point as an interchange point or a train terminal or other point that has any significance in connection with the formula, my answer to this question applies to the category under the heading I have termed it, that is, errors in the names of yards. As to errors in the names of yards on Exhibit [fol. 2758] 255, no New York Central yard is shown on that exhibit. The same is not true of Exhibit 256. There are some New York Central Lines on Exhibit 256. There are no er-ors of this kind that I recall. In Exhibit 257 there are New York Central Lines there and he has shown a yard at Cleveland. I don't know what he might mean by that. Of course you can't get the dope off the front of this, you have to go inside as I know them. There we are, Superior Avenue and Rocky River.

Mr. Ackerman: That is Nickel Plate.

The Witness: It is marked "New York Central", Mr. Ackerman, and if you marked it New York Central it is a typographical error. Those are all Nickel Plate routes on that sheet. Here is Massillon. As I recall it, Kinsman's Road is the interchange point with the Pennsylvania, but Kinsman's Road is not the yard from which the New York Central road haul movement to Huron starts. That movement, I think, starts from Rockport. Exhibit 258 is the New York Central exhibit and Marcy is not the end of the

road haul movement as he has indicated by his arrow, for the locomotive run or the train run from Minerva. The end of the locomotive run is Rockport. He has indicated there also a locomotive run over to Collinwood, which is in error. Those trains terminate at Rockport; the Minerva trains terminate at Rockport. The service to Rocky River and Lorain is over the Nickel Plate Railroad, and I don't know where it commences. The service to Huron has been answered in connection with the previous exhibit. The New York Central service to Huron commences at Rock-
[fol. 2759] port; that was answered in the first exhibit.

As to Exhibit 259, you are getting over into Illinois now. There are two maps there and I think there is no New York Central on either one of them. That is my recollection.

By Mr. Ballard:

Q. Mr. Davenport, during the recess you and I together picked out the Ackerman locomotive performance charts that included portions of the various New York Central lines as follows; Exhibits Nos. 260, 261, 262, 265, 311 and 314 to 323 inclusive. Will you kindly look at the copies of those exhibits which I show you and indicate on which, if any, there are errors of the category we were discussing at the time of the noon adjournment?

A. On Exhibit No. 260 the movement on the E. I. & T. H. starts from the yard known as Ashby instead of Petersburg. We can't go by these charts. For instance, here he shows Terre Haute, and I think he shows Duane Yard as the proper yard when you get over here into the detail. We had better stick to detail. As I mentioned formerly, Paris is Midland Yard. That is on page 2 of this exhibit. That is all I recall on that exhibit. The same situation on page 2 in regard to Paris being Midland, Exhibit 262. On Exhibit No. 265 he shows Lyons-Hillery Yard at Danville as destination for the road movement on our Cairo Division. They are two separate yards, Lyons and Hillery yards are distinct points around Danville, they are not the same place. Lyons Yard is the one the operation from Mt. Carmel runs to. On Exhibit 311, sheet 2, Youngstown should be East Youngstown. I don't know whether that is suffici-
[fol. 2760] ent to call a criticism or not. That is the second

block. In the sixth block the movement is into McKees Rocks, instead of West End, Pittsburgh. The seventh block, ditto. That has been covered. Page 3, in the first block movement from Struthers to Marcy. The destination of the train involved is Elyria. Coal for Cleveland proper and Marcy Yard. Their operation is a Rockport operation. That is the best way to describe it, because this is not the Cleveland destination coal, it is Huron destination coal. I don't think there is anything on Exhibit No. 314, as I recall. On Exhibit 315, the road operation on the Big Four at Columbus, that road operation at Columbus is out of Fair Grounds Yard, at Columbus, and of course the destination Cleveland there is Rockport. The same criticism applies as to Exhibit No. 316. Exhibit 317 is a different railroad now. The operation at Bellefontaine is through Turner Yard instead of Gest. On Exhibit 318 the interchange with the Southern Railroad is at Mill Creek in lieu of Ludlow. The change with respect to Bellefontaine is the same as on the previous exhibit. Exhibit 319 is similar, too; and the other ones, showing the Big Four operation from Columbus to Cleveland. Nothing on 320. On 321 the same as the former criticism, Columbus to Cleveland. On 322, similar to the criticism on the other L. & N. exhibits in connection with the Big Four through Cincinnati. 323, similar to the Southern Railway's other exhibit and with the connection with the Big Four at Cincinnati.

[fol. 2761] There are other categories of errors which I noted in Mr. Ackerman's locomotive charts. The next category I mentioned was errors of the class of power operating in locomotive districts. By that I refer to some locomotive districts where the witness has shown a class of power in operation which does not operate there and other locomotive districts where he has shown a class of power and there is an additional class of power, or additional classes of power, which are as important or more important in the handling of the class of traffic involved in this case than the class of power shown by Mr. Ackerman. I did not make a count of how many such errors I discovered; from the method that I described in counting the errors under the districts classification I imagine there must be 25 such instances on these exhibits. I wouldn't say there were 25 train rating districts where either the

wrong power was shown or additional power should have been shown opposite that that was shown, I would say 25 places on his detail where he has used an erroneous figure as the result of that error in reaching the final answer. Some of the locations, of course, are duplicated, just as has been indicated by the duplication in the junction error category. Counting the number of errors by train rating districts, I don't know whether there would be a dozen or not of such errors, maybe not. As to whether I am able without your asking me the question as to each exhibit to state where they occur, well, I have the information available to sit down and run through the exhibits and pick [fol. 2762] them off, which would be equivalent to you asking me the question for each exhibit.

Mr. Day: That is the part of the detail we would not agree to furnish, Mr. Ballard, under any circumstances.

Q. Then I will ask this question: Mr. Davenport, I show you copies of Exhibits Nos. 260, 261, 262, 265, 311 and [fol. 2763] *and* Nos. 314 to 323 inclusive, also Nos. 256, 257 and 258, and ask you to state whether on any of these exhibits you find errors of the category just described?

A. Yes, sir.

Q. Please state where those errors appear.

Mr. Day: Mr. Examiner, I have stated that we are not going to show that information.

Mr. Ballard: I am not asking for any information, I am simply asking the witness a question.

Mr. Day: We are not going to give the answer to the question. We have made it very clear previously on this record, the reasons why we won't give that information.

Mr. Ballard: As I understand Mr. Day, his statement is to the effect that he will not permit the witness to answer the question. I have not asked for any information in the ordinary sense of the term.

Mr. Day: Well, it amounts to that.

Mr. Ballard: Then I ask that the Examiner make a ruling as to whether the witness is to be required to answer the question or not.

Examiner Trezise: Yes, he may ask him these questions. If counsel instructs him not to answer, then that is a different thing.

Mr. Ballard: All right, now, I renew the question.
[fol. 2764] (3098) Mr. Day: I do so instruct the witness not to answer the question.

(Narrative continued:) My direct testimony shows that in addition to the above categories of errors there are errors in connection with helper performance. I could not make an answer on which one of the exhibits enumerated by you in connection with the next preceding question those errors occur without going through the entire series of exhibits that you have listed as carrying New York Central operations. Asked to look at Exhibit 256, and state whether any such error occurs on that exhibit, I can't answer the questions from your exhibit. I will have to get mine. There are no such errors on Exhibits 256 or 257. On 258 the helper distance shown from Minerva to Brady Lake is in error. (3099) I haven't the correct figure with me.

(It was thereupon agreed that such information would be furnished after the close of the hearing.)

(3100) No helper service is indicated on Exhibits 260, 261, 262, or 265. Exhibit No. 311 is the Pittsburgh & Lake Erie connection and on that exhibit in the first group Mr. Ackerman has shown a helper for two miles in the territory between Jacobs Creek and McKees Rock. From Newell to McKees Rock he shows a helper service of 1.7 miles. The same helper service applies for both of those districts. One of those figures is correct, and I will say that the 1.7 miles is sufficiently correct to use. All through this exhibit he has used those two figures, and it is the [fol. 2765] same figure all the way through. It would be my opinion the 1.7 figure is the proper one to use. I don't mean that the data applied to that distance is the correct data. I mean that insofar as helper distance is concerned these helpers run over that piece of track that is approximately 1.7 miles. That is, in the helper district on the sixth block he shows Newell and West End, Pittsburgh, he (3101) shows a helper for 7 miles. That is the same helper district we have been talking about. It should be 1.7 miles. There is a half a dozen instances of that same situation on 311.

On Exhibit 314 he has omitted the helper service and its regular operation from Corning to New Lexington, his

third line, page 2 of that exhibit. I don't know the distance the helper operates, I don't know the class of helper, and they are the only two figures involved.

Mr. Ballard: I request that those two figures be furnished for the record.

Mr. Day: I submit that Mr. Ballard is attempting to put too much of a burden on us here. We won't furnish that.

(Narrative continued:) I don't think there is anything on Exhibit 315, but as I recall it there are no helpers in this territory. No helpers on Exhibit 315 and on 316, the same answer applies. On Exhibit 317 (3102) the distance shown in the territory from Sharon Yard to Gest Yard [fol. 2766] on the second page and helper service from Sharon to Mound—the distance is wrong, Mound is Mounds—that distance is wrong also in the helper service from Dayton to Glen Echo. I have not sufficiently correct distances to present for those two helper districts.

Mr. Ballard: I request that that information be furnished for the record.

Mr. Day: We think that will be too burdensome also.

(Narrative continued:) The same errors that occur on Exhibit 317 likewise occur on 318 in connection with helper service, and the material necessary to correct them would be the same. Exhibit 319 is the Columbus gateway. There is no helper service shown on that chart. The same criticism applies as to 320. As to 317 (3103) as to the Virginian, New York Central, Wheeling & Lake Erie chart in the other group, if 317 is the right number. The Corning to New Lexington is the one I am speaking of; that is 314. On 321, Columbus Gateway, no helper service is shown by Mr. Ackerman. On 322 the same errors that were called attention to in connection with the L. & N. former chart, occur. It shows operations through the Cincinnati gateway with the Big Four. The same information would be necessary to correct those errors as already requested in connection with the errors where they first appear. The same criticism applies to 323 as in 322. They are both the [fol. 2767] Cincinnati gateway.

Q. In connection with some of these exhibits I notice you stated not that there was no helper service on the route but that Mr. Ackerman did not show any helper

service. In examining these exhibits did you notice any exhibits on which helper service should have been shown where it was not shown?

A. I have called attention to that in connection with New Lexington and Corning. I did not omit any such corrections in my last review of the exhibits that I know of. I have not checked those exhibits thoroughly to find those particular classes of errors.

The next category of errors I discovered was errors in connection with the calculations dealing with the doubling of grades. As I recall it there is only one instance now. That is on the E. I. & T. H. at Dagett, where he gives all the information and fails to include it in his calculation. I think he gives all the information. The distance of that doubling service is somewhere in the vicinity of eight miles.

The next category of errors was errors in car factors and the application of adjusted tonnage. Under the manner in which I have marked the errors I imagine there are 15 or 20 of those, how many individual mistakes I don't know. Maybe there are a dozen individual places where he has used the wrong car factor. I have called attention already to the situation on the T. O. C. where he refers to the use of an adjusted tonnage machine where it is not in use. There are two such instances there. That is in the direct testimony, and the other errors of that nature, as I recall it, are all erroneous car factors. That is all covered in the direct testimony. I haven't corrected his [fol. 2768] errors. The direct testimony simply calls attention to the fact that he says they use adjusted tonnage, and they don't. The data necessary to make the adjustment is not shown on the exhibit. What he needs to make his adjustment is the proper loading order, so that that particular error there runs back into the loading order error, of which there are quite a number and they are all covered. By loading order I mean tonnage rating. This category of errors we are speaking about would be corrected if the tonnage rating (3106) errors that we have already discussed were corrected, only insofar as the particular situation on the T. O. C. is concerned. The others would not. The other errors are in connection with the use of wrong adjustment factors. There were either seven or eight or a dozen of those, quite a few of them in spots.

I cannot state where those errors occurred geographically without reference to the exhibits. Such error occurs on Exhibit 260, on the face of that exhibit, Item No. 1, where he shows a factor of 15. That is wrong; Item No. 3, where he shows a factor of 15 is wrong. That is on the first page. He does not show his car factors anywhere only on the first page. I am referring to Note 1 in the lower left-hand corner where he says: "Schedule rating 4500 tons; adjustment factor (3107), 15 tons per car." That 15 tons is incorrect. It should be 20 tons. That correction does not occur in connection with all of these 15 ton figures [fol. 2769] on this exhibit. It occurs in connection with some of the other adjustment factors on this exhibit. Number 3 should be numbered 10. Note 4 should be Note 8. Note 7 should be Note 15. I don't know, these may be duplications, but on Exhibit No. 265, Note 1 where he shows 15 is wrong; it should be 20. Note 3, where he shows 15 should be ten and Note 4, where he shows 15, should be 8. As to whether Exhibit 311 seems to have any adjustment factor, I don't think there are any more than that. I am not sure that that is all in that category; (3108) I won't say it is. That is all I can find at the present time, without considerable delay. If he would get those things up and complete one of these pictures it would be all right, but he shows notes and you have to go to three or four more exhibits to find what the notes mean.

The next category I referred to is errors in composite tonnage ratings, made by him using ratings for locomotives that were not in service in the territory covered. We did not cover that type of error. We talked about locomotives not being in service, but we did not talk about the tonnage rating that applied to the locomotive being in service. He has made some composite figures, so that that error is an error ultimately of the loading order. If you were given the proper engines that operate on the territory and the loading order that applied to those engines, those errors would be corrected. I don't know whether that is included in these questions or not.

We already have discussed errors in train ratings, errors [fol. 2770] in tractive power, and errors in the type of power assigned (3109) to the particular place. I hardly think that if all of those were correctly applied this category of errors I have just referred to would disappear,

unless we went through the entire territory and told you what engines worked there and gave you the loading order applied to those engines. When I say loading orders, I mean errors with respect to train ratings, that is the same thing. We have also discussed errors with respect to the tractive power of locomotives, and errors in the types of locomotives treated as being in service between particular points. As to whether if the information involved in those three items was correctly applied everywhere, then this latest category of errors to which I have referred would disappear—that is just the same question you asked before, and if you want to understand it that way, I am willing, but I don't so understand it. (3110) As to what extent there would still be errors that would not be corrected by the correction of these earlier categories, we have talked about this class of engines that do not operate in a particular territory. In correcting that error, if we correct it, we are going to give you the class of engine that operates in that territory, and that corrects that error. It does not correct the tonnage rating error that applies to that type of engine, so that we will have to give you all the information that you want in order to rebuild this set of exhibits.

Exhibit 325 is the one with all the locomotive information on it. I can't state by looking at the locomotives listed [fol. 2771] opposite the heading in the first column, N. Y. C. (P. & L. E.—Big Four—E. I. & T. H.) whether there are any errors in that tabulation. I haven't bothered checking it. As to whether there are any locomotives (3111) actually in service on these four railroads, New York Central, P. & L. E., Big Four and E. I. & T. H. in the handling of the class of trains that we are discussing in the various territories included on the exhibits already referred to, which is not shown in this tabulation, I can think of one, it is a G-96. That does not entirely illustrate the type of error I am now discussing. That is one of the errors of that type. To correct that error we would have to know where that engine should be substituted for some other engine, and we would also have to know the tractive power of that engine, we would have to know the loading order applied, but you must understand that while these engines here shown cover the service involved, that is no argument they are in the right place. He has got some of

the engines in the wrong pigeon-holes. In order to answer the question in what instance in Mr. Ackerman's exhibits he has the engines in the wrong pigeon-holes, it will take considerable time, because I have not attempted to carry this stuff from one exhibit to another in that form. By that I mean that while I have listed an error in the exhibit as to the tractive power of the locomotive and I know that that error exists, I have not listed whether the error is [fol. 2772] due to improper application of a class of locomotives to a territory or not, or to error in the tractive power attributed to the class (3112) shown; I don't know which it is. I won't run through my exhibits and indicate all such errors which I have noted on either class. I think we refused to give you that information, and my counsel agrees.

Mr. Ballard: Is that correct, Mr. Day?

Mr. Day: That is correct.

The Witness: That is the tractive effort figures, Mr. Ballard.

(Narrative continued:) In addition to those we have already discussed, there is one other category of errors and I hope that is the last. In my direct testimony I called attention to a duplication of trackage, and I find what I believe to be one more error of that type at least, resulting from the hurried check that I made of the exhibit, where he has overlapping trackage and overlapping tonnage rating districts as well. That is on the P. & L. E. Railroad. On Exhibit 311 it occurs in the section from Jacobs Creek to McKees Rocks (3113) and in the section from Newell to McKees Rocks. There is a duplication of overlapping tonnage ratings. Incidentally, it indicates that the P. & L. E. operates over that 18 miles with 20 per cent greater efficiency from one place than it does another, which is preposterous. Duplication occurs by reason of the fact that the same 18 miles are included in the first two items on page 2 of this exhibit. That exhausts the type of errors [fol. 2773] that I called attention to in my direct testimony.

Mr. Ballard: If your Honor please, I desire to move to strike all of the testimony of this witness with respect to type of errors the corrections in which counsel has refused to furnish in response to our request.

Examiner Trezise: We will take a short recess.

(A short recess was taken.)

Mr. Day: Mr. Examiner, with respect to Mr. Ballard's motion to strike a portion of Mr. Davenport's testimony, I think (3114) it is only necessary for me to say that the position of the petitioning carriers in this case is already quite clearly and quite well stated in the record. We have shown that we regard Mr. Ackerman's theories and formulas as of no value and feel that we are justified in that by the treatment that the Commission has accorded them in previous cases. We feel, as has already been stated, that Mr. Ackerman is here merely on a fishing expedition, that he has thrown in figures without regard to their accuracy or correctness in the hope that the carriers would come in here and give the correct figures upon which he might revamp and revise his exhibits.

Examiner Trezise: Are you arguing this motion?

Mr. Day: I am arguing the motion.

Examiner Trezise: The Examiner is still with you, and [fol. 2774] if you want the ruling it is that the motion will be denied, and the testimony will remain in the record as it is, as the Examiner believes that the motion really goes to the weight of that testimony rather than to its admissibility.

Mr. Ballard: I note an exception to the denial of the motion.

That is all I have of Mr. Davenport.

Redirect examination.

By Mr. M. Carter Hall:

Going back to Mr. Ballard's discussion of the piece of track method that he has adopted in this case, in the geographic (3115) block of territory described in Mr. Durham's Exhibit No. 143 as destination territory in 23922, all pieces of track and all origins and destinations in that territory are not shown on Ackerman's Exhibit 267. My exhibit, 407 or 408, marked "Illinois Junction Point Map" introduced by me yesterday, indicates roughly the extent to which pieces of track, origins and destinations are omitted. Those pieces of track omitted are important ones in the transportation of large volumes of coal.

If, as assumed by Mr. Ballard, Mr. Ackerman had taken all of the pieces of track included in the geographic block described as destination territory in 23922, it is fair to say that the result would have been nothing more than a mathematical grid theoretically superimposed over defined geographic territory with no relation to actual movements of [fol. 2775] routes of coal from actual origin to actual destinations. Such a mathematical grid showing only pieces of track or pieces of routes would not be of any practical value in comparing operating or transportation conditions. (3116) Within the limits of such a mathematical grid various pieces of track on various pieces or routings could be compared and manipulated in an attempt to show similarity or differences of conditions, as the case might be, as between portions of the defined territory.

Recross-examination.

By Mr. Ballard:

Assuming that the territory is accurately defined and you were dealing with the entire territory, if you dealt with the entire territory and included all the track involved in the territory of course there could be no such manipulation.

Referring to Exhibit 407, the main line of the Illinois Central from Champaign to Paxton is one piece of track within the destination territory of the 23922 scale, I would say that is omitted from Mr. Ackerman's locomotive performance charts. That is within the brown area. (3117) Also the C. & E. I., as I recall, from Mt. Vernon all the way up to Hoopeston. I don't recall his showing any of the Burlington. The Burlington gets exceedingly close to that brown rectangle down in the lower left-hand corner. It looks as though it does enter it right on the border from Woodlawn up through Central City and Shattuc. We have also got another little piece of the C. & E. I., also from Pana on the Big Four over to Findlay, and the Wabash from Decatur across to practically Danville. I don't think [fol. 2776] that was included in Mr. Ackerman's exhibit. That is from Decatur across practically to Danville—all the way across the territory, and I think that the Illinois Central section that goes across the northeastern and

northwestern border from Clinton to Gibson City was not included.

Redirect examination.

By Mr. M. Carter Hall:

(3117) I don't think I mentioned the Milwaukee line from West Dana up to Cheneyville, in fact, I don't think I mentioned any red line, I just mentioned blue ones. I did not mention the line of the C. & E. I. from the Indiana fields, going through the northeastern (3118) corner of this territory. It runs from in the vicinity of Danville up to Hoopeston. When I said Hoopeston in connection with the C. & E. I., Southern Illinois movement, I meant Hustle. I did not mention the line of the C. & E. I. from Bronson up through Rossville to Hoopeston.

Recross-examination:

By Mr. Ballard:

I was not enumerating all of the omitted lines, I simply named the important coal carrying lines.

By Mr. Gutheim:

I made this committee investigation into the Holmes & Hallowell scale territory in the summer of 1930. (3119) It was not made with particular reference to this proceeding. It was made with particular reference to what has been spoken of here as the Eastbound Bituminous Coal Case. The members of the committee that went to that territory with me were Mr. Bond, of the B. & O., Mr. [fol. 2777] Strickler, of the Pennsylvania, Mr. Fairfield, of the New Haven, and we had also two Pennsylvania men who were employed in Mr. Triem's office. I understand one of them has since died. I personally was in the territory, as I recall it, about two weeks, and I personally covered the Duluth-Superior harbor area and two of the lines running between Duluth and St. Paul to the Minneapolis-St. Paul destination territory.

In my work here in the eastern territory I did not make any particular investigation in connection with this proceeding into the Pittsburgh & Lake Erie, only insofar as a

hurried check of Mr. Ackerman's locomotive charts were concerned. That is the only P. & L. E. investigation (3120) I have made in connection with this particular case. I think I know the general location of the Pittsburgh & Lake Erie and the character of its lines. They are largely multiple track routes. The main lines from Connellsville and from Newell up to Youngstown, are multiple track lines. I would call them heavy density lines. I would say that the expedition of movement at all times is a large factor in the operation of the Pittsburgh & Lake Erie Railroad.

In this head-of-the-lakes territory, Duluth and Superior are practically one community. I think this harbor area and this longitudinal stretch (3121) of harbor front I mentioned could be described as a continuous area and a continuous harbor front on both sides. The railroad tracks [fol. 2778] run right out on the docks in the lake. The yards are back of the water front and Rices Point, which is a peninsula. There is a yard there. The yards in Superior are right back of the dock. I think my map shows that. It is not generally true that our operation between our yards and to and from our docks is an operation through the two cities. The city of Duluth, which is the largest of the two communities, is located on the side of the hill back from the water front and the railroad tracks are down on the level of the lake. Of course the business end of the town is down nearer the (3122) railroad tracks, but from the standpoint of operation and interference with the city streets traffic and things of that kind, while they have some of that, it is not of a very severe nature. In Superior, which is a much smaller town, the community and the railroad tracks and the railroad yards are more or less in one mass, I would say. There is some such operations in the case of Superior as that the operation between the yard and the docks requires operation through and across the streets at grade.

I did not cover any of the Ashland-Washburn territory, nor did any of my committee.

I think the last time we looked that up Duluth was a city of 100,000 and Superior was a town of considerably less. That is the nearest information I have as to the size of those towns. I think we reached some such conclusion that it was about 150,000 in the joint communities.

[fol. 2779] (3123) Referring to Exhibit 402, I left out purposely the names of the railroads that come into this joint area at the left-hand margin. I felt that in making that map the names of the railroads would simply clutter the thing up and the scale was rather small, so I left out all that sort of information. I think I can tell what those lines of railroads are. Starting just above the middle of the left-hand margin the first line that runs out there is the Duluth, Messaba & Northern. The next one, I think, is the Duluth, Winnipeg and Pacific. The one that heads the second block up from the southern boundary at the left is one of the Northern Pacific Lines (3124), I am not sure which one, I forget the number of it, but it is not the district that hauls the coal for Minneapolis and St. Paul. In fact, it is not the district that the coal moves out over. That is what I mean, it is not the line the coal moves out over.

Referring to the four lines that are shown in the middle block as terminating just to the right of the middle of the sheet, about two blocks up, three of those four lines, I believe, are the D. S. S. & A. and the Northern Pacific and Great Northern routes. I am not sure what that fourth line is. I believe the Northern Pacific and Great Northern routes that I show there are the ones that run down and carry the Twin Cities coal.

On the second block to the right, just where the word "Duluth" appears, the one running to the south, I am [fol. 2780] quite sure, is the Soo Line. The two lines at the right-hand margin that run out, one going along the water front and one going farther south (3125), the outside one there apparently is the Omaha, operating out of Itasca Yard, and that other one running down there is another Northern Pacific Line—the uppermost one, I would call it in the right hand margin. I think that is a Northern Pacific Line.

In addition to those railroads there is a Lake Superior Traction & Terminal Company, I think it is, and that, as I recall it, operates entirely in Superior. The tracks of the Lake Superior Traction & Terminal Company run very close to the water front along that section of the docks marked "State of Wisconsin", as well as tracks of the Northern Pacific.

There are several coal docks in and about Grassy Point. These Grassy Point docks are important docks, I would say.

(3126) Assuming you wanted to get an open top car of coal from one of the coal docks at Grassy Point to the Twin Cities, that open top car would be made empty possibly at the Twin Cities. Most of the open top cars that move coal in this territory move to the Twin Cities and start from the Twin Cities as an empty car and would be hauled back to Duluth and Superior and ultimately find its way into the Grassy Point area. The operation, as I recall it, into either [fol. 2781] the Northern Pacific or Great Northern, depends upon the road that handled it to their Superior Yard and thence over to Grassy Point, or possibly trucked to Grassy Point. When you get it into Superior Yard it would move over to the Grassy Point coal dock in puller movement. You go over the bridge on the Northern Pacific, which is a double draw, which limits the capacity of your drags. (3127) The law requires a locomotive and 29 cars and caboose moving over that bridge, both in the empty and loaded direction, and that is the maximum. After you get across that bridge, you do not have to come down on the flat. There is no elevation in connection with that bridge, it is practically what I call a level railroad. You then move it around this point called "Outbound Yard" on the north side of St. Louis Bay, which is the Grassy Point Yard. When it is in the outbound yard it is in Grassy Point. The outbound yard located in Grassy Point, and then it would move to the coal dock with the switch engine. (3128) If the car went via Great Northern or Northern Pacific to the Twin Cities, it would then be moved from Grassy Point in reverse direction over the same line I have described; and they handle, I should say, half the coal that moves out of the territory. If you were loading a box car in Grassy Point coal dock, that car might come from Minneapolis or St. Paul, similar to the open top, or it might come from one of the grain elevators located in Duluth-Superior area, or from the grain eleva- [fol. 2782] tors next door to Grassy Point.

I have been talking about Riecs Point. That is my error, Mr. Gutheim. I have been discussing Rices Point all along. Let's get this thing straight for the sake of the record. The movements from Grassy Point that move via Northern Pacific and Great Northern are restricted by this double draw bridge. That does not apply in connection with the bridge at Rices Point, that is only a single draw in there. At Grassy Point it does not apply. At Rices Point it does.

In the first place we will have to change that part of the testimony that Grassy Point is an important coal dock yard. (3129) While they have coal docks down there it is not as important as Rices Point. I thought I made the record clear when I made the statement that all movements to and from Rices Point by the Northern Pacific and the Great Northern are restricted by this double draw bridge and movements from Grassy Point to Superior are not restricted by the draw bridge limitations.

That grain elevator is not in Grassy Point. The nearest elevator would be over in Superior proper. In other words, the nearest elevator would be a matter of about a three mile movement to get to the Grassy Point coal docks. I think under the normal operation those cars would be taken from the elevators and placed into a yard before going (3130) to the coal docks. I mentioned the fact that you take this coal [fol. 2783] out to the Twin Cities via the Northern Pacific or the Great Northern and from the coal dock in the vicinity of Grassy Point, and you would have to come around over one of the draw bridges into one of the yards in Superior to make up your trains and then go out for the Twin Cities. The same would be true of all of the lines, and in using the Great Northern and Northern Pacific I was thinking particularly about the draw bridge in connection with the Rices Point operation. The Soo Line operation out of Rices Point is not affected by that draw bridge restriction.

There are a couple of coal docks down in the corner of the map at the point marked Allouez. Supposing those docks want to ship out on the line of the Northern Pacific that goes out on the Duluth side west, which is your line over in the left-hand margin, the lower one of the three (3131), such movement would take the car from the coal dock down in Allouez up to the Superior Yard and go down across the Grassy Point draw bridge right on down the Northern Pacific and out that route, but as I recall the operation out there, the only coal that would move on that route would be coal for local points in the immediate vicinity of Duluth. In other words, it is a rather bad grade, and coal for St. Paul and Minneapolis would not be moved that way. As to coal going west on the line of the Northern Pacific, as distinguished from the southern line to the Twin Cities, it

is the same line up to the top of that thirty mile hill, is my [fol. 2784] recollection. I don't know whether all of those docks can ship coal on the Holmes & Hallowell scale via any of those outbound routes over which the scale applies, but I don't recall any docks that can't. Taking the coal dock at Allouez, I don't think there are any limitations whatever on that dock in shipping out over any one of (3132) the five lines over which the Holmes & Hallowell scale applies. I had in mind in answering that previous question, I think the thing I had in mind does not restrict the movement. I was thinking largely of Ford's Dock, and I don't see any reason why the movement could not be made out of his dock over any of the lines.

Referring to Exhibit 404, showing the movement in the mileage block of the Holmes & Hallowell scale in October, 1929, that movement of 4,257 cars to the Twin Cities block of 150 miles distance, is the movement from any docks that want to ship to the Twin Cities and over any line they want. I don't know anything about the movement of coal coming from the Ashland dock and going to the Twin Cities. We did not have time to get into Ashland. In answer to the question as to whether it is not necessarily the fact, there being ten different lines out of Duluth and Superior over some of which the Holmes & Hallowell scale applies and over some of which it does not apply, that the outbound coal shipped by any one dock on any one day might have to be [fol. 2785] distributed to ten different railroads (3133)—I don't think one of those ten lines handles coal. I am not sure, but, however, the answer to that question generally is such a thing might be possible.

Taking the coal docks and grain elevators north of Rice Point, and the tracks used in connection therewith, that map is too small to attempt to show any of that trackage. Out of all those coal docks the switch extends in both directions. You can move either north or south if it be an east and west line we are talking about. The same way with the grain elevators. Some of those cars as pulled out of the elevator are pulled into the yard shown there, but there is a movement from some of them direct from the elevators to these coal docks.

We did not make any inquiries about the type of winter weather in this Duluth-Superior area. We did not investigate weather conditions, and we (3134) were there during

the month of August when there was no winter available to investigate. I don't remember being told that Duluth has only two seasons, winter and August. I had heard that so much about northern New York that I have forgotten if they did tell me. I would say that is quite cold country up there at times.

Regarding the finding of the committee in the Holmes & Hallowell cases of an average loading of 35 tons per car, we did not investigate that phase of the matter very accurately. You can take our exhibits there, the first and [fol. 2786] second exhibits, and get an approximate average which will run around 40 tons to the car, and it is my belief that 35 tons is obsolete, and due to the influx of the larger cars there is a little increase in that 35, possibly to as much 40. That deduction from our exhibits 400 and 401 is a very rough deduction. We take into consideration tons of anthracite, bituminous and coke, not handled by the railroads, but handled over the (3135) docks. This is an exceedingly rough figure. As to whether there has been any improvement in loading, we did not have time enough to get enough individual cars to call it a picture.

On these Eastern Trunk Line railroads, insofar as Central Pennsylvania is concerned, the general average of car loading runs pretty close to 55 tons on our line. I haven't any very accurate figures in regard to Ohio. I did get a few figures from Illinois and it seems to run lower out there—in the vicinity of 45 tons. It is my recollection that the 55 tons I mentioned in Central Pennsylvania is not a figure that is peculiar to the New York Central, it is general on the Eastern Trunk Lines for system averages.

(3136) We never completed the investigation of the train loadings that were moved on the Holmes & Hallowell scale. We started such investigation but found their records in such shape that it would have been quite an undertaking and we discontinued it. In connection with the Eastbound Case [fol. 2787] I don't remember if I was asked whether Mr. Fairfield, one of our committee members, had not previously to the visit of the committee, made an investigation into that territory to determine train loadings. I think I was asked if Mr. Fairfield was not there before, and in fact I knew he had been there before. I remember Mr. Fairfield being on the stand, and I think you are right that he testified in connection with train loadings. As to Mr. Fairfield's.

testimony being that the average train loading on the Great Northern Lines from Duluth-Superior to the Twin Cities was 3,060 tons, and on the C. M. St. P. & P. it was 2,833 tons, and on the Northern Pacific, 2,394 tons (3137), I really don't recall the figures. We abolished that committee right after that thing and hoped it would never meet again.

I have a vague knowledge of the size of trains that are operated on the P. & L. E. With reference to the statement on page 6 of the report of the Interstate Commerce Commission in I. & S. Docket 3282 "Bituminous Coal to Youngstown": "The ruling grade on the Pennsylvania Lines between Conway and Youngstown is 0.3 of one per cent, which is the same as that of the Pittsburgh & Lake Erie between Colona and Youngstown. It is possible to move trains of from 90 to 100 carloads over these railroads from Conway and Colona to Youngstown during the winter months, and from 100 to 115 carloads during the remainder of the year, [fol. 2788] depending upon the capacity of the cars used. Trains may thus move by a single trains crew." I would say that coincides with my understanding of the situation that insofar as the P. & L. E. is concerned they can move (3138) 115 cars with one engine between those points.

We made no investigation of the density in the Twin Cities territory as compared with the density in Western Pennsylvania territory; we did not get any information as to density.

Re-loading grain cars with coal assists materially in tending toward a balanced operation. When these cars are loaded with coal into the grain country and subsequently loaded in the grain country with grain back to Duluth-Superior elevators, or anywhere else, I don't know whether it is necessary to make a special cleaning of those cars of the remnants of the coal before they can be loaded with ore, I don't know that yet.

On the Pittsburgh & Lake Erie there has been such a movement of ex-lake ore in the reverse direction of this northbound coal that tends to effect the balance of movement on that line. It has been very light this last year, but normally I would say there is such a movement, I don't know its volume, I have no figures. That is not peculiar to the Pittsburgh & Lake Erie, they have it on the other eastern Ohio and Pittsburgh district furnace lines.

(3139) On my Exhibit 404, where I show the distribution [fol. 2789] of commercial coal from Duluth and Superior into Minnesota and the Dakotas, the ton mile earnings I show there is the rate per ton mile for the rate making distance. I know, as a matter of fact, the actual haul on the Holmes & Hallowell scale generally exceeds the rate making distance.

As to whether in the assembling of coal on the Pittsburgh & Lake Erie we assemble it for a road haul movement from the assembling points via any other line than the Pittsburgh & Lake Erie—we get coal off of the Monongahela. What is assembled on the Pittsburgh & Lake Erie we assemble to the assembling point and then do not move it out on any road haul movement direct from our assembling point other than via the Pittsburgh & Lake Erie. In the Ohio No. 8 district on the New York Central there is still, I believe, a movement of coal from Minerva, our assembly yard, via the (3140) Wheeling & Lake Erie Railway.

With the exception of the dock, I think the rates prescribed by the Holmes & Hallowell scale start at designated points in Duluth and Superior. By the Commission's order the distance is to be calculated from Duluth and designated points, such as Rices Point, Grassy Point, Itasca. It is also a fact that because the distance may be computed via not more than three lines of railroad, that you may have a distance which fixes the rate that will be considerably shorter than the actual movement, over the local line that handles the coal from Duluth to destination. In that connection, if [fol. 2790] it will be of information to you, we followed about half of the cars in that month to certain destinations and found a percentage of realization 93 per cent on those cars.

[fol. 2791] JOHN HEWES, JR., was recalled and, having been previously sworn, testified as follows:

(3141) Direct examination.

By Mr. Webber:

I have heard Mr. Ackerman's testimony in this proceeding and have considered his tractive effort studies.

From my experience in practical transportation matters, Mr. Ackerman's theory is fallacious and even if it had any

value for any purpose, it is rendered worthless because of the elimination of or entire disregard of the element of time. "Average Pounds of Tractive Power or Tractive Effort Required to Haul One Gross Ton One Mile" is absolutely without value unless it is known how long it will take to haul that one gross ton that one mile. In the final analysis, time is what we pay for, not only as regards crew expense but also fuel consumption and other supplies.

To illustrate this point, assume two engine districts, which for means of identification we will call "A" and "B". Both of these engine districts are the same length and due to the same ruling grades both require locomotives with the same tractive effort to handle the same trainload which can be and is handled over both districts. On District "A" it (3142) may so happen that the ruling grades are encountered only at two or three points on the entire district. [fol. 2792] There are few instances of heavy curvature or other adverse track conditions. The district has a substantial mileage of multiple tracks and is equipped in whole or in part with automatic signalling and interlocked railway crossings at grade. As a result of these favorable features the run over this district can be made with full tonnage, in, we will say, eight hours.

On the other hand, on District "B" conditions may be very adverse. Ruling grades may frequently be encountered, and as a result it may be necessary to work the locomotive at its full tractive effort and at slow speed throughout practically the entire district. Then too heavy curvature and other adverse track conditions may be frequently encountered. The district may be single track throughout, and not equipped with automatic signalling or interlocked railway crossings at grade. As a result of these unfavorable conditions, the run over the district may very easily consume twelve to sixteen hours.

Mr. Ackerman in his testimony and exhibts presented fails to even make mention of that very burdensome feature (3143) of transportation of coal known as assembly service. This feature includes the moving of the empty car from designated point or yard and placing it under the mine tipple or on the mine empty track ready to receive [fol. 2793] the load, and movement of the loaded car from the mine load track by switch runs to a designated assembly

point where it is finally either switched into or picked up by road trains, which latter operation can be considered as its first move toward its destination. Present day assembly service is particularly burdensome for the reason that due to various types of equipment in use and required by the operators, and the many different grades of coal prepared at individual mines, coal operators require certain types of cars placed on certain mine empty tracks, and in certain positions on one certain track. Then, too, on account of the large number of unconsigned loads carried at mines, the switching out of the billed loads is a very tedious and expensive operation. Switching at coal mines ofttimes has to be done where mine tracks are on heavy grades and a limited number of cars can be handled with one move. There are instances where there is no run-around track and others where such switching has to be performed from the main track where interference from main line trains is quite frequent.

Assembly service varies as to individual railroads, individual districts, and in fact as to individual mines both as (3144) to difficulties in switching as above mentioned and as to distances from point at which the coal is assembled. There is no fixed rule or formula by which a cost of [fol. 2794] assembly service can be computed that will apply at all locations.

Mr. Ackerman in his exhibits seems to assume that the coal simply drops out of the mine tipple into railroad cars, being handled by a "main line" train. Or at the most does not consider that the assembly service constitutes any more extra service than having the road haul train stop at the mine which he evidently considers is immediately adjacent to the main line and pick up the cars. In short, his theory seems to indicate that he just starts at a given initial terminal with no consideration as to where the coal came from or what means were employed to get it to said initial terminal. Mr. Ackerman also fails to make mention of service required in making delivery at destination toward which feature I would address the same remarks as to difficulties and variableness of the service as I have made above concerning assembly service.

In the Lake Cargo Coal Cases of 1929 and the Eastern Bituminous Coal Rate Cases, the impossibility of utilization of full tonnage rating on frequent occasions was ex-

tensively (3145) dwelt upon by the carriers, who pointed out the necessity of maintaining schedules, not only for competitive reasons but also because of the necessity of rendering prompt and efficient service to the public. In this case, due to a lesser amount of traffic offered, the likeli- [fol. 2795] hood of having to run trains light of tonnage is even greater.

The fallacy of Mr. Ackerman's theory predicated upon the movement of coal in solid coal trains was also attacked by the carriers in the Lake Cargo Coal cases of 1929 and the Eastern Bituminous Coal Rate Cases. Its fallacy is even more pronounced in this case due to a lesser amount of coal traffic involved.

In connection with Mr. Ackerman's theory of operation of full tonnage trains and solid coal trains, I would like to point out that with the light volume of traffic moving both coal as well as other commodities, and unless the volume increases, the carriers will be compelled to withdraw from service their heavy, efficient locomotives with high tractive effort and substitute in their stead locomotives not so efficient, and with a lower tractive effort but more nearly fitting the tonnage offered. Locomotives with high tractive effort are efficient and economical if and when the tonnage they are capable of handling is representative, but we can not afford to operate them when their full efficiency and power are not utilized because of their higher maintenance costs (3146) and their higher cost of operation reflected in crew wages, fuel consumption and other supplies.

[fol. 2796] In the same connection, I would like to point out a very impossible feature in Mr. Ackerman's theory of handling full tonnage trains at all times over all engine districts comprising his selected routes. For example, on his Exhibit No. 256 in his route from Ohio No. 8 District from Bellaire to Rocky River via B. & O.-N. Y. C. & St. L., he contemplates handling 8,393 gross tons from Bellaire to Lester, 3,025 gross tons Lester to "RD" tower and 6,000 gross tons from Cleveland to Rocky River. I am wondering what he proposes to do with the excess tonnage when he gets to Lester that can not be handled on the same train from Lester to "RD" Tower and where he proposes to get sufficient additional tonnage when he gets to "RD" Tower to make up the 6,000 gross tons he proposes to handle from Cleveland to Rocky River over the N. Y. C. & St. L.

Mr. Ackerman's theory seems to ignore entirely the servive and consequent expense involved in effecting interchange as reflected in multiple line operation. Again referring to his Exhibit No. 256, I note he proposes to move into "RD" Tower over the B. & O., a train of 3,025 gross tons and leave Cleveland by way of the N. Y. C. & St. L. with a train of 6,000 gross tons. It is a far call from "RD" Tower on the B. & O. to the designated interchange track on the N. Y. C. & St. L. not to mention the further movement by the N. Y. C. & St. L. from the designated (3147) interchange track to the yard in which the train is dis-
[fol. 2797] patched that moves it to Rocky River.

The facts pertaining to this particular operation are that such a train from Lester would not terminate at "RD" Tower but continue on in to Clarke Ave. Yard, Cleveland, 1.2 miles beyond "RD" Tower where it would be switched and classified into the Westbound Classification Yard from which point it would in turn be moved by yard power from Clark Ave. Yard to the designated interchange track with the N. Y. C. & St. L., a distance of 1.5 miles in such sized cuts as the yard power available in Cleveland Yard would be able to handle. Account of heavy grade on our route to the N. Y. C. & St. L. interchange track at Cleveland a train of 3,025 gross tons can not be handled in one cut by the type of yard power employed in that yard. The movement by the N. Y. C. & St. L. after this traffic has been received by them on designated interchange track is by yard engines to their East 55th St. Yard, then again by yard engines from their East 55th St. Yard to Rocky River.

Mr. Ackerman's theory as reflected in his exhibits ignores entirely the diffusion of traffic. His exhibits assume all traffic as going to some certain selected point. No mention is made of traffic going to points intermediate to or beyond such selected points, or even diffusion of traffic to various consignees at the selected point.

[fol. 2798] Mr. Ackerman ignores entirely the service required in taking (3148) care of various types of locomotives used by him over various districts making up some selected through route. As pointed out by me previously, he jumps from one engine rating territory to another without any provision for taking care of the numerous engines he uses or time consumed in changing from one class of engine to another.

Mr. Ackerman's theory fails to reflect the burden of expense exemplified in the refinement of locomotive construction such as installation of larger tanks to avoid delays account of water and coal stops, the installation of boosters, feed-water heaters, automatic stokers, coal pushers, etc.

In connection with expense just mentioned, Mr. Ackerman's theory does not reflect heavy investments that have been made and charged to capital account in the way of elimination of highway crossings at grade, grade reductions and cut-offs made in order that heavy tonnage may be handled in the least possible time. Also installation of automatic signals, interlocking plants at railway crossings at grade, and the strengthening of bridges.

I am a member of the committee which has been investigating and analyzing these various studies that we have talked about, that is to say, Mr. Davenport's committee. (3149) I heard Mr. Davenport's testimony and I agree in [fol. 2799] his expression of views with regard to these studies of Mr. Ackerman. I concur with him in his studies and reports and in the evidence he has given and the expression of his views as to their value or lack of value.

I have taken certain of Mr. Ackerman's exhibits pertaining particularly to movements over the B. & O., they being Exhibits No. 266, 310, 313, 326, 327 and 328, and wish to make the following remarks concerning particularly routes used on those exhibits.

On Exhibit No. 266 the only remark that I have to make is that Mr. Ackerman has eliminated on this exhibit the B. & O. route from the Cambridge District through Bellaire to these northeastern Ohio destinations.

On Exhibit No. 310 Mr. Ackerman has indicated ten separate and distinct routes, starting with B. & O. origins, which, for the sake of convenience, I have enumerated as 1 to 10 (3150) inclusive, beginning of course at the top of sheet 2 of this exhibit. First, for the sake of brevity, I would like to call attention to the fact as indicated in items 1 to 6 inclusive, and items 8 and 9, that he has used an origin at Elm Grove, which is practically the most remote point in the Pittsburgh district and of course produces a longer mileage over the route indicated. Longer than the average route. Item 1, B. & O. Pittsburgh group to Lorain, [fol. 2800] Ohio, by way of the B. & O. In this item

he uses a difficult and circuitous route from Elm Grove to Lorain by way of Glenwood, Newcastle Junction, etc. The route via which this coal actually moves is through Holloway, Ohio, the mileage via this route being 167 miles. Mr. Ackerman's mileage, as you will note, is 254 miles, or 87 miles in excess of the route over which the coal actually moves.

Item 2, B. & O. Pittsburgh group to Akron, Ohio, by way of B. & O.: There are two routes by which this traffic can move. Mr. Ackerman, however, has used only the one route which, as stated as regards Item No. 1, is a difficult and circuitous route from Elm Grove to Akron by way of Glenwood, Elm Grove and Newcastle. The proper route is from Elm Grove to Bridgeport, then Warwick to Akron, the mileage by which route is 133 miles. The mileage as indicated by Mr. Ackerman, as you will note, is 187.4 miles, or 54.4 miles longer than the (3151) route over which the traffic actually moves. The other alternative route for this traffic is through Bridgeport, Dover, Valley Junction, etc., and the mileage via this route is 130 as compared with Mr. Ackerman's mileage of 187.4, or 57.4 miles in excess of the route via which the coal actually moves.

Item No. 3, B. & O. Pittsburgh group to Canton, Ohio, by way of the B. & O.: In this route Mr. Ackerman uses likewise a difficult and circuitous route from Elm Grove to [fol. 2801] Canton by way of Glenwood, Newcastle Junction, etc. The route via which the coal actually moves is through Holloway, Dover, Valley Junction, etc., and the mileage is 108 as compared with Ackerman's mileage of 210.7, or 102.7 in excess of the route via which the coal actually moves.

Item 4, B. & O. Pittsburgh group to Cleveland, Ohio, by way of Akron by way of B. & O.: In this item Mr. Ackerman also uses the difficult and circuitous route from Elm Grove to Cleveland by way of Glenwood, Newcastle Junction, etc. There are two routes by which this coal actually moves, the first being by way of Warwick, Akron, etc., by which the mileage is 156 miles as compared with Mr. Ackerman's mileage of 222.5, or an excess mileage of 56.5 miles over the mileage by which the coal actually moves. The other route is by way of Dover and Valley Junction, by which route the mileage is 163 miles, as compared with

Mr. Ackerman's mileage of 222.5 miles, or (3152) 59.5. miles in excess of the route via which the traffic actually moves.

Taking the next item, the route via the B. & O. from Pittsburgh group to Cleveland through Warwick and Lester, I can shorten this a little by explaining how the coal actually moves.

Item No. 5, Mr. Ackerman, as stated in both items, uses the difficult and circuitous route through Glenwood and [fol. 2802] Newcastle, whereas the route via which the coal moves is through Holloway, Warwick, Lester, the distance via which route is 171 miles as compared to Mr. Ackerman's mileage of 259.1, which is 88.1 miles in excess of the route by which the coal actually moves.

Item No. 6, from the Pittsburgh group to Massillon, Ohio, the same is true as to the route which Mr. Ackerman uses. The proper route is through Bridgeport and Hollaway direct to Massillon, which mileage is 104 miles as compared with Mr. Ackerman's mileage of 214.1, which is 110.1 miles in excess of the route via which the coal actually moves.

As to the next item, the Pittsburgh group to Orrville (3152), via the route which includes the B. & O. and the Wheeling and Lake Erie, in the first place it will be noted that Mr. Ackerman uses Newcastle Junction as an origin point, which is not a fact. Furthermore, Newcastle Junction is not in the Pittsburgh district, being 40 miles west of the last coal mine, namely, Wildwood, located on the B. & O. railroad. Therefore his mileage by way of this route is in excess by 40 miles.

In the first place Newcastle is used improperly as an origin point, as no coal originates there; and in the second place, it is not in the Pittsburgh District, being 40 miles beyond the last mine in the Pittsburgh district on the B. & O. Furthermore in Mr. Ackerman's computation of [fol. 2803] mileage under this item, whereby he obtains a mileage of 191.1, he for some reason has omitted the mileage from Bakerstown to Willow Grove and shows the erroneous mileage, Glenwood to Bridgeport, and also omits the mileage Bridgeport to Martins Ferry.

As regards Item 8 I would address the same remarks as I have made concerning Item No. 7.

In computing the mileage making up 191.1 miles as used by Mr. Ackerman (3154), it is correct he has omitted 16 miles in one instance and he has used 58 miles in place of 72 miles as the mileage from Glenwood to Bridgeport and has omitted entirely 3 miles from Bridgeport to Martins Ferry.

As to the next item, the Pittsburgh group to Rocky River, via Akron, N. Y. C. & St. L. In this item he also uses the difficult and circuitous route from Elm Grove to Cleveland by way of Glenwood and Newcastle. The proper route is, of course, by way of Holloway, Warwick, Akron, etc., by which route the mileage is 181.7, as compared with Mr. Ackerman's mileage of 233.2, which is 51.5 miles in excess of the route via which the coal actually moves.

In Item 16, the Pittsburgh group to Rocky River by way of the B. & O., Warwick, Lester and the N. Y. C. & St. L., Mr. Ackerman has used in this item the difficult and circuitous route from Elm Grove to Cleveland by way of Glenwood, Newcastle Junction, Warwick, etc. The route via which the coal moves is through Holloway, Warwick, [fol. 2804] Lester, etc., via which route the mileage is 186.7 as compared with 269.8, as indicated by Mr. Ackerman, or 83.1 miles in excess of the route by which the coal actually moves.

Exhibit 313, indicates the movement of coal from (3155) Fairmont, W. Va., group to various destinations in northeastern Ohio. Under Item Nos. 1 and 2 the circuitous route from Fairmont by way of Newcastle Junction, 252.7 miles, is included in those two items, which is a route by which this coal does not move. That is through Fairmont, Connellsville, Newcastle Junction, etc., as far as Akron. He uses it to Cleveland in both instances. In other words, the mileage by way of the route I have described, 252.7 miles, as far as Akron is used in this figure, which is a route by which the coal does not move.

Item 3, Fairmont, W. Va., group to Canton, Ohio: In this item is likewise included the circuitous route from Fairmont by way of Connellsville, Newcastle Junction as far as Akron, 252.7 miles, which is not a route actually used, and even in figuring the mileage to Canton Mr. Ackerman has used the route by way of Holloway, Warwick, Akron and then down to Canton. As a matter of fact, the

proper route is though Holloway, Dover, Valley Junction, etc., the mileage for which is 202 miles, whereas Mr. Ackerman, going by way of Warwick and Akron, obtained a [fol. 2805] mileage of 247.3 miles, or 45.3 (3156) miles in excess of the route via which the coal actually moves.

Item 4, from Fairmont, W. Va. group to Massillon, Ohio, by way of the B. & O.: In this item Mr. Ackerman also includes the circuitous route by way of Fairmont, Connellsville and Newcastle Junction as far as Warwick, Ohio, 279.1 miles, which is the route by which the traffic does not move.

Items 5 and 6, Fairmont, W. Va., group to Cleveland, Ohio, by way of Lester and the B. & O., and to Rocky River by way of Akron via B. & O., N. Y. C. & St. L.: In these items he has also used the circuitous route from Fairmont through Connellsville, Newcastle Junction, etc., as indicated in the above mentioned items.

Item 7, I have no other comment to make other than that he leaves out the mileage from Benwood Junction to Martins Ferry, a distance of 8 miles.

Item 8, Fairmont, W. Va., group to Lorain, by way of the B. & O.: In this item he includes the circuitous route through Connellsville, Newcastle Junction, as far as Warwick, 266.7 miles, which is a route that is not used.

Item No. 9, Fairmont, W. Va., group to Huron, by way of B. & O., Wheeling & Lake Erie: I have no comment to make concerning this item except that made concerning Item 7, namely, that he has omitted that 8 mile distance [fol. 2806] between Benwood Junction and Martins Ferry.

As regards Item 10 I make the same comment as concerning (3157) Item No. 8. On the second half of sheet 3 of this exhibit it will be noted the routes from Connellsville, Pa., group to various destinations in northeastern Ohio are shown, concerning which I wish to make the following comments: I have indicated these items as 1A to 10A inclusive for the purpose of brevity.

As regards Items 1A, 2A and 3A: In those three items Mr. Ackerman includes the circuitous route by way of Fairmont and Holloway to Akron, 293 miles, which of course is not the route used and results in a Fourth Section violation.

Item 4A, in this item Mr. Ackerman includes the circuitous route by way of Fairmont, Holloway to Massillon,

267.3 miles, which of course is not the route used and likewise results in a Fourth Section violation.

In Item 5A Mr. Ackerman includes the circuitous route by way of Fairmont and Holloway as far as Warwick, 279 miles, which of course is not the route used, and is also a Fourth Section violation.

Item 6A, I would address the same remarks to this item as made concerning Item 1A, 2A and 3A.

Item 7A, in this item Mr. Ackerman includes the circuitous route by way of Fairmont to Holloway as far as [fol. 2807] Warwick, 279 miles, which of course is not the route used and constitutes a Fourth Section violation.

Items 8A and 9A, no comment other than he leaves out the (3158) 8 miles distance between Benwood and Martins Ferry.

Item 10A, in this item Mr. Ackerman includes the difficult and circuitous route by way of Fairmont and Holloway as far as Warwick, 279 miles, which is not the route used, and results in a Fourth Section violation.

I think I prefaced my remarks in dealing with Exhibit 310 by saying that for the purpose of convenience I would refer to these items as 1 to 10 inclusive, starting at the top of page 2. Maybe I neglected to make that same remark when I took up Exhibit No. 313.

I have but two comments to make concerning Exhibit 326. The mileage shown on the fifth line of this exhibit expressed as Glenwood-Elm Grove, which, however, I think Mr. Ackerman means in the reverse, Elm Grove to Glenwood, of 259.1 miles is by way of the difficult and circuitous route through (3159) Glenwood, Newcastle Junction, etc. The route should be by way of Bridgeport, Holloway, Warwick and Lester, a distance of 171 miles. That is the distance shown from Elm Grove to Cleveland. The mileage of 50.9 shown on line 8 reading Warwick to Lorain, there is a duplication of 27 miles of this distance [fol. 2808] representing the distance from Warwick to Lester, as it is already represented in the 259.1 mile figure.

As regards Exhibit No. 327 the mileage shown is 476.7 on line 13, reading, "Connellsville, Pa. to Akron," is the mileage by way of both routes to Akron and includes the long and circuitous route by way of Fairmont, Holloway, Warwick, Akron, etc. The distance of 293 miles is not the route by which the coal moves.

On Exhibit No. 328 the mileage figure of 511.8 miles shown on line 9, reading, "Fairmont W. Va., to Cleveland," includes the 252.7 miles, the route by way of the difficult and circuitous route, Connellsville, Newcastle Junction, etc., and is not a route by which the traffic moves. Mileages shown on lines 11, 12 and 13 being Fairmont to Holloway, 138 miles, Holloway to Warwick, 72 miles, Warwick to Akron, 14 miles, are a duplication, as they are included in the 511.8 mile figure. That, Mr. Webber, completes all the remarks I have to (3160) make concerning the exhibits of Mr. Ackerman which I have examined.

Mr. Webber: I would like to ask this question of Mr. Ballard. Mr. Ballard, I believe yesterday you made some remarks with regard to the general questions that were asked Mr. Davenport about whether train ratings are used [fol. 2809] as a means of measuring relative operating performance, and the question was also asked Mr. Davenport as to whether the railroads other than the New York Central, in ordinary railroad practice used train ratings for any such purpose, and you stated you admitted they were not used and that the ratings were not used as a measure of operating performance.

Mr. Ballard: That is right.

Mr. Webber: So I feel it is unnecessary, so far as these matters are concerned, to ask Mr. Hewes this question. I do, however, want to ask Mr. Hewes two of the general questions asked Mr. Davenport. Mr. Hewes, at page 1648 of the record, Mr. Ackerman says that the tonnage rating of the locomotive takes into account all factors with which the operating department is confronted in the movement of trains. Will you state, whether in your experience as a practical operating man that statement is correct?

A. I do not consider it to be a fact.

Q. Do you consider that tonnage rating reflects grades unless it is coupled with the tractive effort of the engine?

(3161) A. That is correct, it does not.

Mr. Ballard: That is what I intended to admit.

Mr. Webber: You also admit that?

Mr. Ballard: Sure.

[fol. 2810] Mr. Webber: In other words, Mr. Davenport answered that as a practical operating man, his answer to

the questions relating to Mr. Ackerman's statements was no, and he said, for example tonnage rating does not reflect grades unless it is coupled with tractive effort of the engine?,

Mr. Ballard: Apparently what happened was that Mr. Ackerman made the statement with respect to the factor of train rating, which should have been made with respect to the factor of combined train rating and tractive effort, which is the basis of his formula.

By Mr. Webber: At page 1652 of the record Mr. Ackerman says: "The size of the trains or the tonnage ratings of the trains is, of course, dependent, among other things, upon the tractive power of the locomotive which hauls that tonnage, and railroads in their ordinary practice endeavor to get the maximum efficiency out the amount of the tractive effort available to haul traffic. This is reflected in the type of power assigned to each train rating district in actual practice. The formula which combines the train rating and the tractive effort of the locomotives used therefore reflects all of the conditions encountered in actual operations." (3162) Now does the Ackerman formula, in your opinion as a practical operating man, reflect "all of the conditions encountered in actual operations?"

A. In my opinion it does not.

[fol. 2811] Mr. Webber: I asked you at the original Columbus hearing a question as to assembly service on the B. & O. in the No. 8 District. I wish you would state now so as to make more complete, if that is necessary, your answer that you gave then, what you have found the length of the assembly service to be or the extent of the assembly service to be.

A. In my original testimony in response to your inquiry I hazarded a guess as to the average assembly distances in the No. 8 field as regards the B. & O. Since that time, at your direction, I have personally made a check on the ground of the average assembly distances in the No. 8 field on the B. & O. and find the following: For my own information and convenience I divided the mines into two classes: First, I termed the really active mines are those which had worked during the past sixty days. The other class was those capable of working, which included those which had not worked during the past sixty days, but whose

side-tracks were still intact, and as far as I knew, the machinery was available to produce coal with the necessary preparation, of course.

Under the heading of those working in the past sixty days I evolved a figure representing the average assembling distance (3163) of 6.96 miles. For those not working during the past sixty days, but capable of working, as explained by me, I compiled the average distance of 9.74 [fol. 2812] miles. Taking the average of the total for the two classes, I obtained a figure of 8.56 miles.

Q. And that, as I understand, is an average actual distance of the assembly service?

A. Of the assembly service of all mines either working within the past sixty days or capable of working.

(Narrative continued:)

[fol. 2813] (3164) As I stated, I heard all of Mr. Davenport's testimony. I heard what he said about errors that had been found in connection with the tractive effort studies. There have been numerous errors found in Mr. Ackerman's exhibits relating to the B. & O. Railroad. Those errors come under the category of errors in mileage, errors in tonnage ratings, and errors in tractive effort.

Recross-examination.

By Mr. Keeler:

I did not describe the movement of coal over the Glenwood-Newcastle Junction route. Mr. Ackerman's exhibit did not refer to a movement from Glenwood to Newcastle, he referred to a movement from Connellsville to Glenwood and then to Newcastle, but you referred, as I understand, to the matter of what coal moved from Glenwood to Newcastle. (3165) I don't think I have mentioned what, if any, coal moved over the Gleenwood-Newcastle Junction route, although there is coal that moves, but I was in a way criticising the routes that were employed by Mr. Ackerman, which were erroneous.

By Mr. Ballard:

If you were to ask me with respect to criticisms of Mr. Ackerman's formula, the same questions that you asked

of Mr. Davenport, my answers would be the same insofar as they would include the particular criticisms that I dwell upon. Mr. Davenport, of course, covered a good many [fol. 2814] other criticisms that I did not dwell upon, but I think he covered all of mine, from my recollection of his testimony, and more, too.

There certainly is variation in the conditions of assembling (3166) services in various districts on the B. & O., and I testified this afternoon to that effect. Such variation exists as between, I might say all the districts with which I am acquainted on the B. & O. Take the district with which we are now dealing, No. 8 as compared with the Pittsburgh and the Fairmont, and although the Reynoldsville district has not entered into this, I might say there are some conditions there that are at variance with other districts.

In stating the mileage of the routes improperly used by Mr. Ackerman on his locomotive performance exhibits, I would not be able to say where he used a route with wrong mileage it had any affect on his average distances, because I have not followed out the ensuing computation, but it would appear offhand to a layman that if the route were particularly difficult it would not add any color to the final result. It is true that the significance of the mileage is this: That if a route was used that should not be used, the extent to which it would (3167) influence the final average, both for that district and for the territorial area, would be determined by the number of miles represented. The error is not a distance error in its strict sense. My [fol. 2815] only thought in that would be, of course, without making any computations as to the ensuing results, that if a long, difficult route is averaged with a shorter and easier route the final result of the average obtained would not, to my mind, be exactly a reflection of the proper condition.

Mr. Ballard: Mr. Webber, do you want me to ask Mr. Hewes detailed questions with regard to the errors he discovered, or are you willing to join with me in some sort of short cut?

Mr. Webber: Mr. Ballard, I join with my colleagues in stating that we would not furnish and can not furnish, certainly not now anyway, the details of the various errors.

I tried to shorten the testimony somewhat by a general statement as to what had been found. I can go into that here for half an hour or more, but I tried to shorten the testimony because we are getting toward the close of the day.

Mr. Ballard: I would like to do the same thing. The only difficulty I encountered with your colleagues was that they would not admit my request was sufficient. Except for that (3168) we can make a stipulation that will satisfy me.

Mr. Webber: I am perfectly willing to have Mr. Hewes state the number of errors and the character of those errors found, but I can't go further.

[fol. 2816][a] Mr. Ballard: Are you willing to stipulate that upon a legally adequate request from me to furnish the data necessary to correct the errors checked by Mr. Hewes, you decline to furnish the data?

Mr. Webber: Yes, that I will decline to furnish it. That is right.

(Narrative continued:)

The Dover-Valley Junction gateway is not closed, from an operating standpoint, to my knowledge, and furthermore, although I do not pretend to qualify as to rates or routes, I am told that that is open as to rate, and is in use. (3169) I recall at the opening of the hearing there was rather extensive evidence presented concerning that Valley Junction gateway. If there is any traffic moving, it is moving via that route today. That is, traffic formerly moving via that route is not being moved over any other route, to my knowledge, if such traffic is still moving.

Mr. Ballard: That is all.

(Discussion off the record.)

Mr. Ballard: I withdraw from the stipulation I made.

By Mr. Webber:

It is true I stated there had been found in the analysis and study that had been made of these tractive effort studies of Mr. Ackerman certain errors (3170), and my answer would naturally still be that there were certain [fol. 2817] errors made. I am not able to characterize the number of such errors and what they were. I did not find errors personally.

By Mr. Ballard:

I found personally the errors I pointed out in Mr. Ackerman's exhibit this afternoon, but not the errors to which Mr. Webber refers as regards computation of mileage, tonnage ratings, and tractive effort. That was gotten by another department. Over and above those that I have described in detail this afternoon, are the only ones that I have personally discovered or found in these exhibits. Those to which I testified this afternoon are entirely the result of my own work. I did not examine the exhibits with the intent of seeing if any (3171) errors of the kind other than the ones I mentioned were there. I possibly stumbled over a few, but made no notation.

In adopting Mr. Davenport's testimony with the qualifications just referred to by me, I did not intend to be understood as saying that I had found in the B. & O. locomotive performance exhibits errors of the same kind as (3172) found by Mr. Davenport in the New York Central exhibits. In framing my reply to you, Mr. Ballard, I honestly had in mind particularly my opinions as to Mr. Ackerman's theory as subscribed to by Mr. Davenport. In saying that errors of the kinds stated by me had been found in the exhibits, I meant that at Mr. Webber's request, I [fol. 2818] think, our Bureau of Operating Statistics examined these exhibits for Mr. Webber with a view of determining errors in the category which I have described, with respect to B. & O. exhibits only. I had nothing to do with that. I have been advised as to how many errors in the various categories were found and what they were.

(3175) I think I have previously testified that the information with respect to the mileage errors was transmitted to Mr. Webber and from Mr. Webber to me through the bureau I mentioned, our Bureau of Railway Operations. I can't say how it was transmitted to Mr. Webber. It was transmitted to me verbally by Mr. Webber. The nature of the information was, as I have also previously stated, that there were numerous errors found in Mr. Ackerman's exhibits as concerns mileage, tonnage rating, and tractive effort. The name of the department that discovered those errors is on the record, the Bureau of Operating Statistics.

(3176) Mr. Ballard: I request Mr. Webber to furnish for the record the memorandum of the errors of the kinds

referred to discovered by the Bureau of Operating Statistics of his railroad in the Ackerman locomotive performance exhibits, or a transcription of the information from this memorandum.

Mr. Webber: Mr. Examiner, I will furnish that here in the morning.

Exam. Trezise: What is that, relative to the distance mileages?

[fol. 2819] Mr. Webber: It will be such a memorandum as will show the errors that have been found by the committee as to gross tonnage or adjusted ratings or the failure to show helpers on trains and tractive power and incorrect distances.

Mr. Ballard: For the time being that satisfies my request. (3177) I reserve the right to make further request.

(Discussion had.)

Mr. Ballard: I would like to make another request. In addition to that information I request the necessary data to correct the errors.

Mr. Webber: I refuse to furnish that, Mr. Examiner, with great respect.

Exam. Trezise: But you will furnish what you said you would furnish a moment ago?

Mr. Webber: Yes, sir.

By Mr. Boden:

I think I spoke of Elm Grove as in the Pittsburgh District. (3178) It is in West Virginia. I admit that I am not very well versed on districts, but I understand the Pittsburgh district, that is from a rate standpoint, does it not, includes the Elm Grove and Moundsville fields, as we operating men term them. That is the extent which I had in mind in mentioning that as the Pittsburgh district.

[fol. 2820] By Mr. Ballard:

The omission of eight miles of service of which I spoke, occurs between Benwood Yard on the B. & O. and Martins Ferry, which is an interchange between the B. & O. and the Wheeling & Lake Erie. That eight miles is a B. & O. operation. Various kinds of engines are in service there. That work is performed by what might be termed a yard

district run. There is no tonnage rating in effect there as regards that particular crew that performs that work. I would not term it either a line haul service or transfer service. At the present time the crew (3179) that is performing the interchange between the B. & O. and the Wheeling & Lake Erie in that territory is one that is dispatched from Glenwood Yard and performs switching into Bridgeport and Martins Ferry territory, and included in its duties is the interchange to and from the B. & O. and the Wheeling & Lake Erie. Might I say, maybe to satisfy you, Mr. Ballard, that I realize that that is what might be termed in the strict sense of the word as an interchange service, but it seemed rather a sizeable amount of mileage to be omitted from the through route.

Mr. Ballard: I have one more matter. In view of Mr. Webber's refusal of my last request I move to strike the evidence of the last witness with respect to errors in the locomotive performance exhibits.

[fol. 2821]. Exam. Trezise: And the same ruling will be made on this: That it will be retained and on the same ground.

Mr. Ballard: I note an exception.

[fol. 2822] Testimony Taken at Columbus, Ohio, February 17, 1933

J. E. Teal was called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. M. Carter Hall:

(3180) My name is J. E. Teal; residence, Richmond, Virginia; occupation, special engineering staff of the Vice President and General Manager, Chesapeake & Ohio Railway.

For the past nine years I have had a great deal to do with special investigations of an operating economic nature and the development of tonnage ratings on the C. & O. Railway.

(3181) My railway experience covers a period of 25 years, five years of which was in the Engineering and Mainte-

nance of Way Departments of the B. & O. and Missouri-Pacific, 11 years in the Operating Department of the B. & O. on the Staff of the Vice President in charge of operation, and I received my earlier education at Purdue University, which institution conferred the degree of Civil Engineer. I am a member of the American Railway Engineering Association, being Chairman of Committee 21, Economics of Railway Operation of that Association. I am a member of the American Society of Civil Engineers. I was also a member of the Operating Committee which was delegated for the purposes of this case to examine Mr. Ackerman's testimony and prepare rebuttal, and have taken part in the [fol. 2823] deliberations of that Committee.

I have heard the testimony of Mr. Davenport, speaking for that Committee. I subscribe to Mr. Davenport's conclusions in regard to the value of the Ackerman theory or formula as a practical standard by which to compare operating and transportation conditions.

(3182) I have never heard of an instance where in ordinary railroad practice train ratings, as such, are used as a means of measuring relative operating performance, either on the C. & O. or any other railroad.

Q. At page 1632 of the record Mr. Ackerman says: "The size of the trains or the tonnage ratings of the trains is, of course, dependent, among other things, upon the tractive power of the locomotive which hauls that tonnage, and railroads in their ordinary practice endeavor to get the maximum efficiency out of the amount of the tractive effort available to haul traffic. This is reflected in the type of power assigned to each train rating district in actual practice. The formula which combines the train rating and the tractive effort of the locomotive used therefore reflects all of the conditions encountered in actual operations." Does the Ackerman formula, in your opinion as a practical operating man, reflect "all of the conditions encountered in actual operations"?

(3183) A. I don't think so.

Q. Have you any comments of a general character with respect to Mr. Ackerman's C. & O. locomotive charts?

[fol. 2824] A. Yes. On pages 1732 and 1934 of the record Mr. Ackerman makes statements that lead me to believe that the locomotive performance charts and supporting tonnage rating information, used in connection with Exhibits

315 and 319, were the same as those introduced by the Chesapeake and Ohio witness in the Lake Cargo Case, with the exception that the tonnage ratings of locomotives operating between Russell, Ky. and Parsons, O., were increased to 12,500 pounds to conform with the present operation. In examining into this matter, I find that Mr. Ackerman uses the tractive effort of Chesapeake & Ohio compound Mallet locomotives operated as simple engines instead of as compound engines. The locomotive tractive effort figures for these compound engines were properly computed and rated for compound operation in connection with the Lake Cargo exhibits, they being from 74,200 pounds for Class H-4, 75,650 pounds for Class H-5, and 77,900 pounds for Class H-6, instead of the figures used by Mr. Ackerman of 94,000 pounds for Class H-4, 101,000 pounds for Class H-5, and 98,700 pounds for Class H-6. The effect of this application by Mr. Ackerman is to largely over-state the tractive effort expenditures per gross ton one mile.

(3184). (Narrative continued:) From the standpoint of the railroad the facts were correctly shown in the Lake Cargo Case. Mr. Ackerman's exhibits in this case have not followed what the railroads contend is the correct method of computing these ratings. Since the Lake Cargo Case [fol. 2825] the tonnage ratings of locomotives operating between the Kanawha district coal fields and Russell have been increased from 19% to 23%, and the tonnage rating of locomotives operating from Hinton to (3185) Handley has been increased 18%. I might say on this exhibit No. 319 the tonnage ratings between Handley and Russell were also increased some place between 19 and 23%, as they are the same engine districts as appear on Exhibit No. 315.

I have something to add to Mr. Davenport's criticism to the effect that Ackerman's theory ignores the element of time as to the transportation burden. This may be illustrated on the Chesapeake & Ohio Railway by reference to two freight engine districts having about the same physical conditions as to grade. On the Logan Sub-Division, compound Mallet locomotives are used having a tractive effort ranging from 74,200 pounds to 77,900 pounds. Also Mikado locomotives are used having a tractive effort of 67,700 pounds. The tonnage rating of Mikado locomotives is 11,000 tons. The relationship of Mallet to Mikado locomotives is about 7 to 3. That is on the Logan Sub-Division.

I mean the number of engines in service during this period. During the first ten days of January, 1933, the average speed was 12.3 miles per hour, road time. The gross ton miles per crew hour produced were 88.948 (3186); while on the Cincinnati Sub-Division, where Mikado locomotives are used exclusively, having a tractive effort of 67,700 pounds, [fol. 2826] and the same tonnage rating, that is, 11,000 tons, the average time between terminals was at the rate of 19.9 miles per hour road time and the gross ton miles per hour, crew time, were 167,329, or about 88% greater than on the Logan Sub-Division. The conditions which permitted increased speed and increased train load on the Cincinnati Division were largely responsible for the improved performance. These conditions are as follows:

(1) The Cincinnati Division is double-tracked and fully equipped with automatic signals, while that portion of the Logan Sub-Division between Peach Creek and Barboursville is operated under manual block and has 12 miles of single track.

(2) The curvature conditions are less severe on the Cincinnati Division as compared with the Logan Sub-Division.

(3) The Cincinnati Division is operated exclusively with Mikado locomotives. These are able to maintain higher speeds with a given train load than the Mallet locomotives which constitute 70% of the locomotives operated on the Logan Sub-Division.

In making the tonnage ratings of 11,000 tons referred to, the time between terminals on either division was not considered. (3187) Tractive power is not the unit actually used in hauling the train load back of the engine and tender; the actual unit is the drawbar pull.

Cylinder tractive effort of locomotives may be expressed [fol. 2827] by the formula

$$T = \frac{d^2 \quad S \quad .85P}{W}, \text{ in which}$$

T = cylinder tractive effort
d = diameter of cylinders in inches
S = length of stroke in inches
P = boiler pressure in pounds per sq. in.
W = diameter of driving wheels in inches.

Substituting the above values in the formula, it may be expressed: Cylinder tractive effort equals the product of the square of the diameter of the cylinder in inches times the length of the stroke in inches times 85% of the boiler pressure in pounds per sq. in. divided by the diameter of the driving wheels in inches. A portion of the cylinder tractive effort is required to overcome the total engine and tender resistance.

The tractive effort at the rim of the driving wheel is the
(3188) difference between the cylinder tractive effort and the internal machine friction resistance of the locomotive.

The drawbar pull is determined by deducting the total engine and tender resistance from the cylinder tractive effort and is available for hauling a trailing load back of the tender.

A tractive effort of 400 pounds is sufficient to haul 80 tons on level tangent track assuming 5 pounds per ton for train resistance. If the entire locomotive weight is on drivers and equal to one ton (all of which is required for [fol. 2828] adhesion) then the trailing weight on level tangent track will amount to (80 minus 1) or 79 tons or 79 times the weight of the locomotive.

If only half the locomotive weight is on drivers the locomotive will weigh two tons for every 400 pounds tractive effort, hence the trailing weight which it is capable of hauling will be 80 minus 2, or 78 tons, which equals 78 ÷ 2, or 39 times the weight of the total locomotive. Likewise, if only 30 per cent of the locomotive weight is on drivers, the total locomotive will weigh 3⅓ tons for every 400 pounds tractive effort, and the trailing weight which it is capable of hauling will be 80 minus 3⅓, or 76⅔ tons, which equals 76⅔ ÷ 3⅓, or 23 times the total weight of locomotive.

On a one per cent grade the tonnage which 400 pounds tractive effort will haul is reduced from 80 to 16 tons and the (3189) trailing weights for locomotives having 50 and 30 per cent of their weight on drivers are correspondingly reduced from 39 and 23 to 7 and 3.8 times the weight locomotive.

Another example, on a 1.6 per cent grade, one locomotive having 50 per cent of its weight on drivers is equivalent in hauling capacity to two locomotives of the same weight having only 30 per cent of their weight on drivers and likewise

a locomotive having 70 per cent of its weight on drivers is equivalent in hauling capacity to three locomotives of the [fol. 2829] same weight having only 30 per cent of their weight on drivers.

The hauling capacity as between different locomotive designs is not truly reflected by the Ackerman theory. I will first consider the difference in the design of what might be termed new line locomotives as compared with old line locomotives. New line locomotives cover those types that have been developed in the past 8 or 10 years. New line or modern locomotives have relatively larger boilers and fire boxes, which permit more economical fuel combustion and allows greater tractive effort to be sustained at higher speed, compared with the older locomotives. Also modern locomotives have improved valve and steam port designs which permit a more economical utilization of steam than the older locomotives. Modern locomotives are equipped with improved superheaters and other accessories and they carry higher boiler pressures, which result in greater tractive effort for a given size of (3190) cylinder.

The chief difference between the new and old designs of steam locomotives is in the size of fire box and grate area. This difference calls for two axles under the fire box instead of one, so that the following 4-6-4, 4-8-4 and 4-10-4, also 2-8-4 and 2-10-4 types may be regarded as new line locomotives. These locomotives also contain many other improvements not shared by all of old line locomotives, such [fol. 2830] as the locomotive booster, improved mechanical stokers, feed water heaters, exhaust steam injectors, and improved drafting arrangements.

The weight on drivers for the given types mentioned above ranges between 30 and 40 per cent of the total weight of locomotive including tender. The weight on drivers for corresponding types of the old line locomotives ranges between 35 and 50 per cent of the total weight of locomotive and tender. In other words, the addition of another axle under the fire box has made it possible to increase the weight of the engine excluding tender without increasing the weight on drivers. By so doing it has been possible to increase the size of the boiler and improve its efficiency which means a double gain in hauling capacity. These improvements in efficiency are not reflected by the Ackerman formula.

I will now consider the difference in the designs of locomotives for various classes of service.

(3191) The class of service in which the locomotive is intended to be used has a material effect on the design. As an illustration, consider two locomotives of the same total weight, one to be used in high speed freight service on low grade lines and the other to be used in slow freight service on heavy mountain grades. The capacity of the boilers may be substantially the same. The locomotive to be used for the high speed freight service will have a smaller num- [fol. 2831] ber of drivers of larger diameter, which results in a smaller proportion of total weight of engine and tender on drivers, lower tractive effort and a relatively higher reserve boiler capacity in proportion to the rated cylinder tractive effort. The locomotives intended for use on the heavy grade lines will have a larger number of drivers of smaller diameter, with a larger proportion of the total weight on drivers, resulting in higher tractive effort and less reserve boiler capacity in proportion to the rated cylinder tractive effort. None of these differences are reflected by the Ackerman formula. In simple language, all of this means that Ackerman's tractive power unit does not reflect efficiency of the locomotive in hauling traffic. The above discussion clearly illustrates that there is a wide variation in the hauling capacity of engines having the same cylinder tractive effort; also, there is a wide variation in (3192) the cost of repairs to engines having the same cylinder tractive effort, and there is a wide variation in the hauling capacity of engines of the same weight. The fallacy of Mr. Ackerman's theory is fully demonstrated by the fact that according to his theory, a freight train division could be operated just as efficiently with a yard or switcher (type 0-8-0) locomotive as with a Mikado (type 2-8-2) road locomotive having the same cylinder tractive effort, and the same weight on drivers, which on the face of it, is absurd.

Maintenance of way expenses are generally related directly to the volume of tonnage, i. e., gross ton mileage, in- [fol. 2832] cluding locomotive and tender. It may take twice as many locomotive miles of the same tractive effort to move a given volume of tonnage over one division compared to another division, requiring the same maintenance of way expenditures, by reason of the fact that grades and other operating conditions permit only 50% of the train

load on one division as compared with the other. Under these conditions, while maintenance of way expenses may be approximately the same on each division, the maintenance of locomotives will be approximately double per unit of traffic on the division having heavier grades.

The Ackerman theory does not take into consideration the burden (3193) of returning empty cars to coal mines. The burden of moving empty cars to coal mines is very seldom the same as the burden of moving loaded cars in the opposite direction. Grade conditions on the C. & O. Railway are usually more difficult in connection with the empty moves, and other operating conditions are such that the tractive effort unit has no meaning whatsoever as a measure of such conditions.

Cross-examination.

By Mr. Ballard:

(3193) In respect of defects in the Ackerman formula in failing to accurately measure elements of service involved in the loaded line haul (3194)—I subscribe to everything that Mr. Davenport has said in that respect, and I have not attempted to cover them in my own testimony. I would [fol. 2833] not attempt to answer that without having time to go over my thoughts. In other words, I have not a copy of the record and I have not a copy of Mr. Davenport's testimony, and while I say I subscribe to everything he says, I have not tried to remember everything he has said. I don't have before me a summary of the twenty-one points made by Mr. Davenport.

Mr. Hall: If it is desired by Mr. Ballard I will be very glad to get a copy of those twenty-one points so Mr. Teal can examine them in detail if he wishes.

(3195) (This was later done.)

(Narrative continued:) It is correct that one of the Committee's points which I elaborated is that tractive effort does not measure relative locomotive efficiency, and that there are two variables involved in that proposition: One is the fact that tractive effort and drawbar pull are not in constant ratio, and another point involved is that the engines having the same drawbar pull may operate in varying de-

grees of efficiency, depending on many considerations. I do not necessarily mean when I say "with varying degrees of efficiency" that one of those engines would manufacture a pound of drawbar pull more cheaply (3196) than the other.

Maintenance of way is related to other considerations besides volume of tonnage. I would say the character of the track structure would be an important one, the drainage [fol. 2834] would be an important one—two of the more important ones, I would say. By character of the track structure, I intend to differentiate between a well-ballasted heavy rail and a poorly ballasted light rail. As to drainage, the element of topography enters into the matter. The difference between the maintenance cost, as to drainage, assuming the same engineering standard of construction (3197), but one piece of track being straight and level and the other up and down and curving, depends upon to what extent the engineer can lay out his grade lines in the level country sufficient to take care of drainage requirements. Ordinarily he will lay out perhaps a minimum of .2% grade, we will say, in the level country, and I fail to find level country where that is not possible, and .2% grade usually takes care of drainage requirements. In the mountainous or hilly country, while your drainage by and large is better, you have other conditions which sometimes have a great effect upon maintenance expenses, you have slides and all sorts of troubles of that kind, wash-outs.

It is correct that a road constructed with rail of proper weight and proper ballast, etc., is cheaper to maintain than one that is inadequate in those respects; and that in order to achieve that result you have got to spend more (3198) money in your investment account on the first road than on the second, it is more expensive to construct a first-class [fol. 2835] road than a second-class road, other things being equal. As to whether you will have to assume an investment burden in order to eliminate the drainage problem in either the level or hilly country—I can't for the moment see any material difference from that standpoint in one territory versus the other territory. In some cases it might be necessary to spend some money to (3199) take care of drainage, either in the mountainous country or the level country.

One-third of maintenance expenses is generally considered as affected by use, and two-thirds irrespective of use. Volume of use and volume of traffic are one and the same thing. There are certain limitations to the formula that the variation with respect to that matter is in indirect ratio: more traffic, more maintenance. The variation is in that direction, but I say you can't consider it as a direct relationship.

(3200) Referring to the twenty-one points, the first point says: "The final figures shown on the Ackerman exhibits are arrived at by erroneous mathematical computations". To my knowledge that criticism does not involve any omission. I subscribe to No. 2 because on our own railroad we (3201) cannot always move our trains at full train loading because we do not have the tonnage to fill out unless we want to wait for it. I would say point No. 10 is directed toward an omission. I would say as to "empty return", that would [fol. 2836] be an omission, No. 18. I would say as to No. 20, that the formula does not reflect relative investment, etc. (3202) No. 18 reads: "The Ackerman theory of tractive power does not reflect the relative burdens of transportation"—this refers to assembling cars. That assembling is a complete omission. The failure to measure delivery service after the line haul movement has ceased, covered by point 5, is in the nature of an omission. The interchange service is in the nature of a complete omission.

(3203) I would say that the fact that most of the trains will be loaded to full tonnage is not taken into consideration in establishing the rating. The fact that the tonnage was never reached would likely mean that we would not assign the proper power to that particular district, and would not result in any revision of the rating. In planning your operation you take into consideration the volume of traffic, the nature of the traffic and the kind of power most satisfactory for performing the service desired. When a locomotive is assigned to a particular district that locomotive will be rated for slow freight traffic and it will be rated at its maximum for slow freight traffic, regardless of volume of traffic or what. (3204) It is correct we would not put a larger locomotive than is necessary on a division where the traffic did not require it.

Housing and preparation of locomotives, No. 14, will vary at different terminals as far as the expense is concerned.

That will depend upon the facilities available for perform-
[fol. 2837] ing the service and the number of engines handled in the facilities. It is a fair statement that if you had to service only one engine it would be more expensive per pound of tractive effort than if you had to service one hundred engines, also whether the roundhouse is conveniently located or not, and how it is equipped, etc.—all of those things count.

(3205) As to No. 21, weather, temperature is perhaps the principal element involved. I would say rain ordinarily does not interfere with the tonnage rating. Rainstorms, etc., might interfere with your movement, with your ability to get over the railroad—snow storms, rainstorms and things of that sort might influence. A clean wet rail helps your adhesion. Heavy snow would interfere, and low temperatures would interfere. I think most railroads commence to change rating around 35 degrees, approximately that—I don't remember.

[fol. 2838] W. R. Triem was recalled and, having been previously sworn, testified as follows:

Redirect examination.

By Mr. Orcutt:

(3206) I am the same Mr. Triem who has already testified in this proceeding. I have worked continually with the Operating and Accounting Committee referred to by Mr. Davenport, to whom the Ackerman studies were turned over for analysis and consideration. I heard Mr. Davenport's testimony. I agree with the exposition of Mr. Davenport. As a member of the committee of which Mr. Davenport was chairman I had a part in the formulation of those reasons.

Supplementing and supporting the testimony of Mr. Davenport that the theory of comparing operating conditions presented by Mr. Ackerman in his tractive power ton mile exhibits is fundamentally wrong in principle as well as in its particular (3207) application; a few specific failures of the Ackerman theory to reflect the differences between

various actual operations conducted under my jurisdiction will be described.

The Ackerman theory ignores differences in efficiency of locomotives of same tractive power and tonnage rating. We have two locomotives assigned to the Central Region for use in road service that are similar in tractive efforts to which the same tonnage rating is assigned. The L-1 has a tractive effort of 61,465 pounds. The M-1 has a tractive effort of 64,550 pounds. Due to the relative operating efficiency of these two locomotives, the M-1 engine has [fol. 2839] been assigned to high class freight service, whereas the L-1 has been assigned to helper, local and short run service, where local conditions will permit of its use. As further illustration of the relative value of the two locomotives for road service, we have 126 L-1 engines in storage and no M-1 engines in storage.

As an officer of the Pennsylvania Railroad, before tonnage ratings are effective on the Central Region of the Pennsylvania, they must be approved by me. The territory here under consideration in Eastern Ohio and Pennsylvania is within the Central Region.

(3208) Tonnage ratings have no connection with time. Neither has tractive effort. Therefore, since work performed or energy expended can only be measured in relation to time, it is obvious that tonnage ratings combined with tractive efforts cannot possibly be used as an index of work performed or energy expended in moving cars and engines on any railroad.

The Ackerman theory assumes a constant relationship between tractive power and tonnage rating. The relationship of (3209) tonnage rating to tractive effort is not constant with various types of engines on our railroad. Taking the tonnage rating of various locomotives from actual tests conducted on the Eastern Division between Crestline and Conway, we find that an I-1 engine requires 30.9 pounds of tractive effort per ton of rating, M-1 engine requires 28.8, [fol. 2840] L-1 engine requires 27.4 pounds, H-10 engine requires 27.9 pounds of tractive effort per ton of tonnage rating. According to this method of assigning power it would appear logical for me to assign L-1 locomotives to all operations in the Central Region. In other words, take out of storage the 126 L-1 engines and put into storage the heavier I-1's and M-1's. Years of experience of the operating

officers of the Central Region have convinced us that such a procedure would definitely increase our operating expenses, making necessary the extending of freight schedules and in general would give us a much less efficient train operation. The fact that we have found it desirable to use engines which, judged by Mr. Ackerman's theory, are less efficient, is conclusive evidence of the failure of the theory to fit actual operating problems.

The Ackerman theory can be used to show variations in operating conditions where none exist. It is possible, through (3210) the substitution of one type of engine in a given territory for another type, to show a variation in the tractive effort per gross ton which according to the Ackerman theory indicates a difference in operating conditions although physically no change is made in conditions.

It is entirely within reason that we would desire to take out of service between Mingo Junction, Canton and Cleveland, our class I engines and replace them with class N-1 engines. [fol. 2841] This is physically possible because we have in storage 41 N-1 engines at the present time. These two classes of engines have the same tonnage rating, although the N-1 develops slightly less tractive efforts than the I-1. Between Mingo Junction and Canton the I-1 engine would require 35.44 tractive effort pounds per rating ton. The N-1 would require 30.42 tractive effort pounds per rating ton. By the mere issuance of an order from my office, therefore, it is possible to change the apparent relative operating difficulty on this line by approximately 10 per cent. It is also not impossible that changes in the volume of traffic or other controlling factors might make it desirable to use a consolidated type of locomotive now generally used in local service in this territory. We have approximately 55 of this type of engine in storage. It would require by the use of this locomotive 33.88 tractive effort pounds per rating ton, although the tonnage rating is 1,577 tons as compared with 2540 with the (3211) class I engine. In other words, by decreasing the apparent difficulty of operation, according to Mr. Ackerman's theory, from 35.44 to 33.88 pounds, or about 5 per cent, we would increase the number of engines required to handle the traffic about 40 per cent.

The Ackerman theory fails to show comparisons of physical operating conditions. On November 9, 1926, a cut-off between Bayard, Ohio, and Canton, Ohio, was put into serv-

ice and at the same time certain changes were made in the [fol. 2842] road facilities between Rochester, Pa., and Bayard, Ohio. I believe approximately $4,600,000.00 was spent on this project for the purpose of improving the efficiency of road operation for traffic routing, Mansfield, Toledo, Crestline and beyond. According to Mr. Ackerman's theory this was a mistake. The use of I-1 engines on the trains between Conway and Canton requires 34.36 pounds of tractive effort per gross ton, whereas a single engine train via the improved facilities required 36.67 pounds per ton.

As a function of transportation supervision it has been found possible to obtain economy in the use of helpers westbound between Yellow Creek and the summit east of Bayard, which is on the improved line above mentioned, a distance of 17.6 miles. When these helpers are used the combined tractive efforts per gross tons drops to 23.17 pounds, therefore, according to Mr. Ackerman's theory (3212), without making any change in the physical conditions, the operating difficulties as shown by his figures decreases about 36 per cent. Should we desire to show a much more favorable operating condition without spending any money on changing grades and facilities, it can be accomplished by the adding of a helper engine which would reduce the tractive efforts required for each gross ton to 18.91, or nearly 50 per cent improvement in operating conditions, as compared with single engine train operation.

The Ackerman theory ignores fundamental operating [fol. 2843] principles. One of the items that would appear as an indication of the fact that the time element is not taken into account in Mr. Ackerman's study is that by the use of helper service efficiency may increase, while our payroll to railroad trainmen is increased and not taken into consideration by the studies.

On Exhibit 257 is shown the tonnage rating of 7218 tons for a I-1 engine Mingo Junction to Yellow Creek where by some sort of legerdemain the train makeup is altered to provide 6308 tons which tonnage is continued through to Cleveland. In my general operating testimony given at Columbus on December (3213) 15, see page 388 of the record, I stated that a single engine train with a helper, Yellow Creek to Summit, contained 3500 gross tons. Mr. Ackerman having subsequently put in his Exhibit 257, it would appear that

he was not much concerned with the actual operations as described by me.

Another peculiarity appears on Exhibit 257, namely, while trains from Mingo Junction to Shale are hauled with I-1 engines, according to this exhibit it is a simple matter to erase out the I-1 and substitute the M-1 as the type of power on the train, as it passes an imaginary line at Bayard. As a matter of fact we operate no M-1 engines between Mingo Junction and Canton. In a similar manner, between Dover and Bayard, I-1 engines are shown handling a train of 4600 tons, M-1 engines apparently being used beyond that point, although there is no terminal at Bayard.

[fol. 2844] The Ackerman theory ignores variations that exist in distribution and assembly service peculiar to coal traffic. As has already been touched upon in previous testimony, there are peculiar conditions surrounding the distribution services at Cleveland on our line where short light engines with short wheel base are required to place cars along our elevated tracks which cannot be compared with other terminals where the delivery can be effected with larger type locomotives on switching or industrial branch lines. It is obvious that the handling of cars in the former case is much more difficult (3214) than on the latter.

There can be no similarity in assembly service as between various railroads and various districts, hence any formula that ignores assembly service is extremely dangerous as it cannot reflect relative difficulties of operation. To illustrate: One mine may be equipped with an adequate track lay-out where the empties can be placed at one end and the loads removed at the other. This same lay-out may occur at a mine where the total output is run-of-mine coal and cars are dropped down from the empty tracks indiscriminately as applied to the type of cars. Obviously there is no great difficulty in placing empties at this mine and pulling the loads. Compare this operation with a modern washing and screening plant where the coal is prepared and where the empty tracks on account of the topography cannot be reached excepting through a running track alongside of [fol. 2845] loading tracks. The various types of cars must be placed so that they are dropped down at proper intervals as the screening or washing demands, the 70 and the 50 ton hopper, the gondolas, the foreign cars and private cars, all

must be placed on the empty track in a predetermined order to permit the loading of the various classes of cars with the various kinds of output. If the operations stopped at that point it would be bad enough but the whole process must be gone through again when the mine orders out certain definite cars from (3215) among the unconsigned coal stored below the tipple. Then again the various types of cars must be switched out according to car number, as per billing instructions, the balance returned to the loading track and switched over and over again until finally billed out.

The distance between the mines and each assembly yard, that is the yard where mine runs originate and terminate, is another variable factor that is ignored by the Ackerman theory.

From mines on the P. R. R. in the Pittsburgh District to assembly points the average distance is 17.9 miles, in the Connellsville District 40.0 miles, in the Ohio No. 8 District 18.1 miles, and in the Cambridge District 11.1 miles. The average of all districts on the Pennsylvania is 20.8 miles. Those figures were average distances from all mines to assembling points—not a weighted average.

The Ackerman theory employs a mythical tonnage rating [fol. 2846] train that is not obtained in actual practice on the W. & L. E. Ry.

The same discrepancies appear on the Wheeling & Lake Erie, with Mr. Ackerman's exhibit compared with actual operations, as has been described for the Pennsylvania Railroad. Mr. Durham, who is responsible for the operation of the Wheeling & Lake Erie, on his Exhibit 146 to a considerable extent bases his cost study upon a train tonnage of 3661 tons between (3216) Pine Valley and Cleveland. It can be safely assumed that if a larger tonnage were possible the W. & L. E. would have secured it. On Exhibit 309 various movements via P. & W. V.-W. & L. E. route are illustrated and require around 16 tractive power pounds to handle one gross ton. Using the gross tons per train of 3661 and the tractive efforts of locomotives described by Mr. Durham, page 976 of the record, the average tractive effort to haul one gross ton on the W. & L. E. route between Pine Valley and Cleveland is approximately 24 pounds, or 50 per cent in excess of that given by Mr. Ackerman.

If the Ackerman theory could in any possible way be used to indicate comparisons of operating conditions and which

in the foregoing we have maintained is on the contrary quite impossible, his conclusions could not be accepted for the reason that the data contained on his exhibits is variously in error as to facts of distance, types of engines, initial and final terminals, and tonnage ratings.

[fol. 2847] On Exhibit No. 256 not a single figure is correct out of the sixteen purporting to show "Tractive Effort required to Haul One Gross Ton in pounds." Some one or more items of fact in the underlying data for each of the routes described have been found in error.

On Exhibit No. 257, out of the eight routes employing some part of the Pennsylvania Railroad none of the tractive power (3217) figures on the right side of the statement are correct.

It follows of course that Exhibit 266 must likewise be in error in those particulars where data has been taken off of Exhibits 256 and 257.

On Exhibit 312 every figure purporting to show "Tractive Power Required to Haul One Gross Ton" is in error in the same manner as was found on Exhibit No. 256 and Exhibits Nos. 326-327, and 328 are in error as result of the errors occurring in the underlying Exhibit No. 312.

Train ratings are not used on the Pennsylvania Railroad as a means of measuring relative operating performance, and I know of no railroad where they are so used.

Referring to page 1648 of the record where Mr. Ackerman says that the tonnage rating of a locomotive takes into account "all factors with which the operating department is confronted in the movement of trains"—I don't think that statement is correct.

Referring to the statement at page 1652 of the record [fol. 2848] where Mr. Ackerman says: "The size of the trains or the tonnage ratings of the (3218) trains is, of course, dependent, among other things, upon the tractive power of the locomotive which hauls that tonnage, and railroads in their ordinary practice endeavor to get the maximum efficiency out of the amount of the tractive effort available to haul traffic. This is reflected in the type of power assigned to each train rating district in actual practice. The formula which combines the train rating and the tractive effort of the locomotive used therefore reflects all of the conditions encountered in actual operation." In my opinion

as a practical operating man, the Ackerman formula does not reflect "all of the conditions encountered in actual operations."

Cross-examination.

By Mr. Ballard:

There is no variation in drawbar pull, depending upon the locomotive, necessary to move one gross ton under identical circumstances. It is not correct that all of the illustrations I gave of the fact that certain locomotives need more pounds of tractive effort to move one gross ton than other locomotives was simply by way of illustrating the fact that the variation between tractive effort and drawbar pull is not always constant. (3219) The term "tractive effort" that I employed was employed in a rather loose sense and indicated rather the drawbar pull than the energy being developed by the locomotive. If I know that I have a thousand [fol. 2849] pounds of pull at drawbar, I can determine from that how many gross tons I can move from A to B without knowing what particular engine is in front of the pull; the locomotive ahead of the drawbar has no bearing upon that particular detail. It is correct that it may take a different number of pounds of tractive effort to produce a given number of pounds of drawbar pull, depending upon the particular locomotive. I can't say that all of my illustrations are susceptible of explanation by reason of that proportion, because the tractive effort term that I used, to all intent and purposes, was meant by me as the drawbar pull. It is true that I have said twice that the drawbar pull will move the same number of gross tons train weight irrespective of the particular locomotive that manufactures the drawbar pull. (3220) I agree that the drawbar pull necessary to move a gross ton could never vary except with the variation in conditions under which the gross ton was to be moved. It is correct that in spite of that fact I point to the fact that a given amount of tractive effort will not always move the same number of gross tons even under identical conditions, because some of our engines produce a type of tractive effort pounds of which we need more to move a given gross ton than other types of our engines. We have no types of engines whose pounds of tractive effort per ton of train rating

are the same, that I know of, and none of these illustrations I gave had such a condition explained. There is a variation [fol. 2850] between the tractive effort in all cases of all locomotives that I used as an illustration. (3221) That would be my answer as to locomotives on our railroad. I know of none. It does not necessarily follow that as soon as you vary from one type to another there is some variation in tractive effort per ton of train rating, but I mean by that that I can't think of any. It is entirely possible that such a condition could exist. I think it would be safe to assume that you can find some place a condition on our railroad where the pounds of tractive effort per ton of train rating will be the same for two different types of locomotives. The variation is not entirely due to the fact that certain locomotives are designed for certain types of work and other locomotives for other types of work. That is one of the factors, namely, the work to be performed by the locomotive. There are, of course, other factors. The other factors are embraced in the statement that as among locomotives designed for a given type of work some are more efficient than others. If you took the most efficient locomotive under a given (3222) set of circumstances which was known to the state of the art at some particular time and applied the Ackerman formula and then you repeated the process 20 years later when the art had advanced, I think you would get a different result.

I can best describe what considerations I bring to bear on the problem of approving or disapproving a tonnage rating for a particular district by merely stating that when a ton- [fol. 2851] nage rating is put up to me I consider it simply in the nature of an offer on the part of the mechanical department of the use of a machine of which this constitutes part of the specifications, and my checking usually consists of trying to find out how that new machine will compare with machines of a similar character in use on our railroad or with the tonnage rating of that particular engine on a division where it has already been used. I am concerned only with the specifications, if you please, rather than the transportation aspect of the problem. The transportation supervision of the operation of that locomotive is an entirely different matter. That does not mean I am not concerned with the question of whether that is the most efficient type of locomotive to assign to that district (3223); that means that

that gives me the specifications of that particular engine, so I may or may not assign it to that particular district. It is really one of the basic items of efficiency.

Assuming a particular type of power is going to be used on a particular division and the train rating is made in the general manner described by Mr. Davenport, the selection of the power is not in question in the particular case mentioned. My approval of the tonnage rating of a locomotive has to do with the approval of decisions reached by the mechanical department, and I make sure that that decision that they reach is a safe decision and that the locomotive which they say can handle so many thousand tons can actu- [fol. 2852] ally handle that many tons so that it won't tie up my railroad. In considering and passing on that question, my first thought is to be assured that the test was conducted at the point where my transportation people feel is (3224) the most difficult operating section of the railroad as to grade and curvature. My second aim is to determine that that test was conducted in such manner as to insure that the locomotive can start the maximum tonnage on this grade and move it at a low rate of speed, much less than ten miles an hour over the ruling grade. I want to be sure, in other words, that that engine does not stall under actual operating conditions.

I am Superintendent Freight Transportation. I am a transportation official and not a motive power official.

I didn't discover any errors in any of the Ackerman exhibits except those referred to by me by exhibit number. All of the errors that I refer to are contained in the basic data on Sheet 1. (Ackerman's Exhibit 256).

Q. Please state what they are.

Mr. Orcutt: Mr. Ballard, I have no objection to his stating what they are if he remembers them, but as far as the (3225) necessary data to correct them goes, we will not furnish it.

Mr. Ballard: As I understand your statement, Mr. Orcutt, [fol. 2853] it applies to all of the exhibits referred to by number by Mr. Triem?

Mr. Orcutt: Well, all of the basic data to which he has just referred in his answer to your former question.

Mr. Ballard: But I was only asking about one exhibit.

Mr. Orcutt: That is all his answer went to, obviously, but I might say it would be the same as to the others, when you

get to them. In other words, our position has been very clearly stated all through this record, that we do not feel there is any obligation on our part to bring Mr. Ackerman's data up to date and enable him to revise his exhibits and come in again, and then we would have to go over them all again and prolong this hearing indefinitely.

Mr. Ballard: I have no more questions.

By Mr. Martin:

Q. Mr. Triem, I understand you to say in connection with the 3,661 tons shown on line D, page 1 of Exhibit No. 146, introduced by Mr. Durham, representing the tonnage handled by the trains there shown between Pine Valley and Cleveland, "it can be safely assumed that if a larger tonnage were available the Wheeling would have secured it." Did you mean by that statement that the 3,661 tons represented the maximum amount of tonnage which the Wheeling could have handled by the trains there shown between Pine Valley [fol. 2854] (3226) and Cleveland?

A. Absolutely not.

(Narrative continued:) In my statement I had only reference to the average number of tons per train that had been obtained as shown on that statement, with no reference to the maximum capacity of the engine or train or the Wheeling and Lake Erie's route.

Mr. Ballard: Mr. Examiner, I move to strike Mr. Triem's testimony with respect to errors in the same manner as I did in connection with the other witnesses. I simply want the record to show in the proper place the motion to strike Mr. Triem's testimony with respect to errors in the Ackerman locomotive performance charts because of counsel's refusal to furnish the (3227) data requested for the purpose of correcting the errors, and I assume that the ruling and the allowance of exception will be the same as in the other instances.

Mr. Orcutt: I wish to call attention to the fact that Mr. Triem did not enumerate any specific errors whatever. His testimony was general.

Examiner Trezise: However, the ruling is the same.

Mr. Day: Mr. Examiner, I have two statements referring to the errors in B. & O. exhibits of Mr. Ackerman, which Mr.

Webber stated he would furnish for the record this morning. [fol. 2855] Mr. Ballard: I withdraw my request for those because I reframed the request afterwards and Mr. Webber said he would not furnish the corrections.

Mr. Day: I shall offer these statements in evidence.

Mr. Ballard: I object to their being offered unless they are identified and the witness produced for me to cross-examine.

Examiner Trezise: Inasmuch as the request is withdrawn—

Mr. Day: The understanding on the record when we adjourned last night was that Mr. Webber would furnish these statements. Now whether Mr. Ballard withdraw his request or not does not make any difference. Mr. Webber did not understand that he withdrew his request and I did not so understand.

Mr. Ballard: Wouldn't it make this difference, if your Honor please, that if Mr. Day wants to offer these as part of his case he must do so through a witness?

(3228) Mr. Day: Not in view of the understanding that was had last night.

(Discussion off the record.)

Mr. Day: I will ask that the documents to which I refer be marked for identification as Respondents' Exhibits A and B.

[fol. 2856] (The documents referred to were marked Respondents' Exhibits "A" and "B", for identification.)

Examiner Trezise: Mr. Day, with respect to Respondents' Exhibits "A" and "B", offered for identification, but without a witness to be cross-examined on the things shown, according to the Examiner's interpretation of the record that Mr. Ballard withdrew his request for this information, the said exhibits cannot be received in evidence.

Mr. Day: I should like to have the record clear that those papers marked for identification Exhibits "A" and "B" are tendered pursuant to what I understand was the arrangement made by Mr. Webber yesterday evening, and Mr. Webber had to be in Charleston, West Virginia, today to attend another hearing and could not be here personally, and based on the understanding he had yesterday it seemed

unnecessary to have the witness here who prepared the exhibits and was familiar with the facts stated.

[fol. 2857] E. F. SAUR was recalled and, having been previously sworn, testified as follows:

Recross-examination.

By Mr. Martin:

(3229) All of my experience has not been with the Pennsylvania Railroad. I have never had any actual experience on the Wheeling & Lake Erie Railway, and have never operated on that railroad in any capacity.

It is a fact that the only cost studies I have made in the past are cost studies relating to terminals. I testified in I. & S. Docket 3619, the Ex-River Coal Case, that I had never had much to do with line haul cost studies (3230); and that statement is still true.

Referring to my statement that the first step I took in my study of Mr. Durham's Exhibit No. 146 was to investigate the operating ratio of the Wheeling & Lake Erie Railway Company, which I found to be 68.87 per cent in 1929, 73.22 percent in 1930, and 79.67 percent in 1931, from which I reached the conclusion that "it would appear to an accountant that the Wheeling & Lake Erie system of operations were not on a very profitable basis"—I did not make any comparison between those operating ratios of the Wheeling & Lake Erie Railway and the operating ratios for the same years of the Pennsylvania. Nor did I make any such comparison with the operating ratios of the New York Central Railroad or of the B. & O. Railroad for the same period. I do not know the operating ratios of any of these companies for the years 1929, 1930 and 1931.

[fol. 2858] As bearing upon the question of whether or not the Wheeling & Lake Erie Railway Company was operated on a profitable basis (3231) in 1929, 1930 and 1931, I do not know how many times it earned its fixed charges in each of those years, or what extent that company has reduced its indebtedness from earnings during the past ten years, or to what extent that company has made net additions and betterments to its property out of earnings

during the past ten years. Information as to those items would all have some bearing to an accountant as to the possible character of operation of the Wheeling & Lake Erie Railway. I did not take those matters into account. I did not limit my investigation entirely to the question of operating ratios on the Wheeling. There has been an exhibit introduced in this hearing indicating that the return on the property invested, as I recall it, was 1.86. (3232) I don't remember what year that was for. It was an exhibit introduced by Mr. Monroe. I don't recall the year; I recall the fact that it was less than 2 per cent. That was not referred to in my direct testimony. My conclusion was predicated entirely upon operating ratios of the Wheeling for those three years, 1929, 1930 and 1931, except to the extent that I had Mr. Monroe's testimony in mind. To the extent to which I relied upon the question of the operating ratios I made no comparison with my own railroad operating ratios as a standard to see whether they were relatively good or bad.

[fol. 2859] (3233) Referring to page 9 of Exhibit 146 showing estimated cost per net ton mile for handling coal to Cleveland of 5.1 mills, I made those calculations personally.

(3234) (Witness is thereupon handed blank page by counsel, together with page 9 of Exhibit 146, and asked to remake the calculation last referred to, without reference to notes, for the purpose of describing the method used; whereupon discussion was had between counsel and noon recess was taken.

At 1:15 o'clock P. M. of the same day the hearing was resumed, Mr. Saur resuming the stand.)

(3236) During the noon recess I have had opportunity to refresh my recollection of the method by which I arrived at the result of 5.1 mills per net ton mile for the handling of coal from the Ohio No. 8 District to Cleveland. (3237) Naturally, the starting point is the figure shown in line "L", average cost per ton freight expense. That is the dividend, and that for Cleveland is 77.9 cents. Now, you have got to have a divisor. The object sought for is to calculate the number of mills per net ton mile. If you have the costs you have got to divide by the mileage. Mile-

are generally is supposed to represent the movement from the point of origin to the point of destination. I used the train miles there of 152.8 miles. The 152.8 miles I used included the 63 miles for the haul of the through train from Pine Valley to Brewster, plus the 14.8 miles of puller serv-
[fol. 2860] ice, and the 75 mile haul from Brewster to Cleveland. (3238) When I made that calculation I knew the distance haul is 138 miles from Pine Valley to Cleveland, but there is assembling service in the district and I did not know whether the coal was all billed from the same point or whether it was billed from different points. I did not know how much net ton miles was accumulated in the assembling of the loads. I simply took the train miles as probably fairly reflective—what might have been the total net ton miles, which would be the divisor into the 77.9 cents. I did that in face of the fact that on page 1 of that exhibit, Item "D," it is plainly shown that the miles of line haul are 138, but as I tried to explain, there is an assembling service there and I did not know—the proper divisor would be the miles from the billing point to the destination. I pursued the same method in connection with the other five points:

[fol. 2861] (3241) In connection with my criticism of Item "A", page 7 of Exhibit 146, I made the following statement: "Track maintenance items A-1 and 2, this expense is proportioned to gross ton miles, with no recognition of unusual expenses that might have inflated the total figure, although such expenses occur in districts affected by this analysis." I was guided in making that statement by Exhibits Nos. 40, 41, 42 and 43 introduced in I. & S. Docket 3619, which shows violent changes in the different sections shown on these exhibits. They did not show violent changes in maintenance expenses; (3242) but in tractive force and miles, gross tons, tonnage ratings. There are seven blocks shown between Mingo and Cleveland and there are certain evidences from the showing that that must be a very hilly part of the railroad. I know nothing about any expenditures in dollars and cents made on that division of the railroad for maintenance. In connection with my criticism of Account No. 278, in which I detailed the amount of $42,867,00 which I say is a combination of road and yard expenses, I took the break-down of that Account 278 and found that

the facilities listed as purely road amounted to $65,576.37. The facilities listed as yard amounted to $25,349.17. The common figure I gave does not appear in the various items marked under the column of "Use, road and yard." The facilities listed as Road and Yard I did not undertake to disturb, because I had no way of knowing in any way what the proportion was chargeable to Road and Yard. My [fol. 2862] calculation was only directed to those plainly marked "Road" and plainly marked "Yard". (3243) The $42,867.00 is a common figure between "Road" and "Yard", but I had no idea of knowing how to put them in either one of the two classifications. The amounts I used for yard are: $2,856.27; $111.32; $11.07; $6,541.81; $5.30; $10,240.55; $1,480.69; $352.63; $18.13; $1,822.28; $259.44; $1,649.68. As to the $12,248.29—I see that is marked "Yard".

I do not know whether locomotives are ever moved light eastbound on the Wheeling & Lake Erie in order to balance power; but I think I have the right to qualify that. (3244) With a balance of traffic westbound of something like 25 per cent and the fact that the cars loaded with coal, the gross weight of which I believe is estimated at 75 tons and the empty at something like 20 tons, whether there was actually light power moving or not, the fact must remain that those empty cars would go back on trains which, of necessity, must have a great deal less than their potential engine tonnage mileage. So whether you used the words, "light engine" or "light train", the fact remains that the eastbound trains must cost more per unit. If I used the words, "light engines" in my testimony I should have used the words "light trains".

Account 405 is crossing protection. It has been my practice to actualy divide the cost of crossing protection on the basis of number of miles used by road engines versus yard engines. Coming to the Wheeling & Lake Erie, I do not know what (3245) proportion of this account represents [fol. 2863] the crossings on the Wheeling & Lake Erie which are used by road engines exclusively. I do not know the number of crossings on the Wheeling & Lake Erie Railway. Because of the few yards between Pine Valley and Cleveland I could draw no other conclusion on that account than that it would be, on the Wheeling, largely road engines.

I made no investigation to determine what crossings were included in yard limits or what crossings were used solely by road engines in reaching that conclusion.

Redirect examination.

By Mr. Orcutt:

(3246) I heard all of the testimony of Mr. Durham in the Ex-River Case, and in this proceeding as to the operation of the Wheeling & Lake Erie, except the testimony which he gave at Washington, at which hearing I was not able to be present, but I read over the transcript of testimony.

Referring to the figure 5.1 mills, in arriving at that I could not use the usual method followed by accountants because the information was not available in the exhibit. The usual method is the expenses per net ton mile or the expenses divided by the number of miles the net ton is hauled from the point of origin to destination. Mr. Durham did not give the necessary figure to enable me to follow that method.

In preparing these thirteen pages of what turned out (3247) to be thirteen pages of criticism, we had to have a [fol. 2864] starting point, and that paragraph was only intended in the nature of one or two preliminary paragraphs leading up to a conclusion that it was necessary to further check the exhibit. We only used those figures as a sort of a preliminary statement. They have no connection with the rest of the criticisms. There are none of the other computations in the rest of my analyses based upon those figures in any way. The operating ratio is the relation of operating expenses to the operating ratio. If the operating ratio is below 100, the difference between the operating ratio and 100 represents what is left to pay fixed charges, interest on bonds, and things like that, out of the operating revenue.

It is a true statement to say that the capital structures of various railroads differ decidedly. If one railroad has a large number of bonds, the interest payments on which must be met, while another railroad has a small proportion of bonds but a large amount of common stock on which it

is not required to pay dividends at periods certain, (3248) the railroad with the lesser amount of bonds and the greater amount of common stock would have more money left out of the difference between the operating ratio and 100 to spend upon maintenance and improvements and other things instead of paying it for bond interest. Unless the capital structures of two railroads are identical, a comparison of the operating ratios of those carriers would not mean anything whatever as to what that road was actually [fol. 2865] earning after fixed charges, except that having studied operating ratios for sixteen years there is a general similarity.

Recross-examination.

By Mr. Martin:

(3248) My conception of operating ratio—say a railroad had an operating ratio of 70. To my mind that would mean that 70 cents out of every dollar of operating revenue was used to pay operating expenses. Whether that railroad had cost one hundred million dollars or ten million dollars to construct, or whether it had one hundred million dollars or ten million dollars in (3249) bonds outstanding would not make any difference in that operating ratio, but the lower the operating ratio the more money they would have to pay whatever the fixed charges were and taxes.

(3250) It is not true that what I determined in this figure of 5.1 mills was the mills per net ton as hauled from origin to destination. The figure that I determined there is the figure divided in all cases by the train miles shown. I don't know—the exhibit does not disclose whether all of the coal is billed from the same origin point or different origin points. It does disclose that the haul from Pine Valley to Cleveland is 138 miles. What I determined was the mills per net ton for the distance hauled from the train origin to destination.

(3251) My answer to Mr. Martin was that if 70 cents of the operating revenue was used for operating ratio, there [fol. 2866] was only 30 cents left. Assuming that the ratio was over 100, I would say that the railroad was undoubtedly losing money. The operating ratio figures are not a true picture at all as to the making or losing of money. It

is a relation of the operating expenses to the operating revenue. When you come to the ultimate determination of whether the road is making money, you have to take into account (3252) whether the difference between the operating expenses and the operating revenues is diverted to payment of interest on bonds or common stock, or whatever the case may be, if it has enough to make those payments.

Redirect examination.

By Mr. Orcutt:

If a railroad was fortunate enough to have an operating ratio as low as 55 per cent, but on the other hand it took 50 cents out of every dollar to meet its fixed charges. I would not say that road was making any money.

Mr. Martin: Mr. Examiner, this might be an appropriate time for me to put into the record some figures as to the movement of ex-river coal which were asked for the other day by Mr. Orcutt. The information which he asked for at that time was substantially this: A statement showing net tons of ex-river coal loaded weekly at points on the [fol. 2867] River Division of the Wheeling & Lake Erie Railway Company and moved to Cleveland, Lorain, Canton and Massillon from the time the ex-river rates became effective to the latest available date. We have prepared that information and as I thought it might be interesting to the parties of record we have prepared it (3253) in exhibit form. I don't think it is necessary to recall a witness to put it on.

Examiner Trezise: Parties can agree to that, I believe.

(Exhibit No. 412, Mr. Martin, received in evidence.)

Roy S. Kern was recalled and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Orcutt:

I have prepared a statement of coal moving in the period August 1, 1932 to January 29, 1933, inclusive, of ex-river

coal on rates filed applicable from Ohio river points indicated on my exhibit.

Mr. Orcutt: We will offer that as Exhibit No. 413.

(Exhibit No. 413, Witness Kern, received in evidence.)

(As to Exhibits 412 and 413, it was requested by counsel that additional information be furnished in order that the [fol. 2868] two statements may conform, which it was understood would be done, and marked as Exhibit 413-A.)

(3254) The Witness: Mr. Martin, on page 2 of Exhibit 413 you will find a separate weekly set-up for account of Wheeling & Lake Erie Colona business. Those figures are not comparable with the figures on page 1 as to time, because the figures of the P. & L. E. are approached in slightly different form. I assume you will want me to recompute the P. & L. E. figures so that they will conform to your figures on Exhibit No. 412. Is this correct? The P. & L. E. work on a month of four weeks, and the last week sometimes has eight or nine days.

Mr. Martin: No, I won't ask you to make that recomputation, Mr. Kern.

(3255) (Narrative continued:) I have previously shown in my Exhibits 42, 43, 44, 45 and 46 the average distances via all tariff routes from active mines and via all tariff routes from all tariff origins from the southern high volatile and low volatile districts separately to Cleveland, Lorain, Huron, Canton, Massillon, Akron and Mansfield, and have since compiled in the same way the average distances from the same origin districts to these destinations as a group. The average distance via all tariff routes from active mines in the districts named on my exhibits to which you have made reference to the seven points of destination [fol. 2869] named are 402.9 miles from the high volatile districts and 473.9 miles from the low volatile districts. The corresponding figure from all tariff origins is 427 miles from the high volatile districts and 469.3 miles from the low volatile districts.

(3256) I want to make a brief statement in connection with Mr. Martin's cross-examination of me on Monday, where he called attention to an error in my direct testimony with respect to rates from the No. 8 District to Painesville.

I used that as an example in connection with my testimony as to the disturbing effect which mileage scales necessarily have upon group rate adjustments. Of course there are many other similar examples that I could have used and which would not be subject to the same criticism as Painesville.

As regards the Wheeling & Lake Erie origins this is illustrated by the fact that the application of the 23922 scale as the Wheeling applied it disturbed the long existing parity of rates to Cleveland and Lorain on the one hand and to Huron on the other hand. A similar application would have increased other rates within the Cleveland group from Wheeling & Lake Erie origins, and the particular points would be Elyria—that is the only one I have in mind now, although there probably are others. The same situation is necessarily true with regard to the other destination groups which would be disturbed by applying the mileage scale as the Wheeling & Lake Erie have applied it to their own local destinations.

[fol. 2870] Recross-examination.

By Mr. Ballard:

(3257) It is possible by reference to my exhibits to identify the origin districts from which these averages apply; they appear upon my Exhibits Nos. 42 to 46 inclusive.

Under a strict application, it is a fact that under a mileage scale the only destination grouping you can have is what the scale will produce, meaning point to point application. That means that the group can only be as wide as the mileage blocks in the scale.

Painesville is the same thing as Perry. On the Nickel Plate it is the one common switching district and on the New York Central they take one common rate under a common switching tariff.

[fol. 2871] Mr. Orcutt: At the former hearing here in Columbus I asked Mr. Hoffacker to furnish ceratin information in connection with his Exhibit 148. Mr. Martin has furnished that (3258) information and given it to me in statement form, but we do not have copies. I am wondering

if we cannot offer this and have it copied into the record by the reporter, if there is no objection by Mr. Martin.

Mr. Martin: No objection.

(Following is the statement referred to by Mr. Orcutt:)

Mines in Pittsburgh and Connellsville Freight Rate Districts, as per Kern's Exhibit 39, showing Number of Companies, Mines, Tonnage Available, and Daily Capacity, exclusive of such data shown for

River Mines on Hoffacker's Exhibit 148

District	Companies	Mines	Tons available	Daily capacity (tons)
Captive and Commercial All-Rail Mines				
Pittsburgh	98	139	1,655,800,000	176,500
Connellsville	51	59	202,980,000	37,200
Total	149	198	1,858,780,000	213,700
Captive All-Rail Mines Included in Above Total				
Pittsburgh	3	7	334,460,000	19,000
Connellsville	1	4	39,900,000	8,700
Total	4	11	374,360,000	27,700
[fol. 2872] Remaining Commercial All-Rail Mines—Both Districts				
Pittsburgh and Connellsville	145	187	1,484,420,000	186,000
River Mines Both Districts—As Per Exhibit 148				
Commercial	9	14	120,756,000	23,300
Captive	10	20	1,591,177,000	90,700
Total	19	34	1,711,933,000	114,000

Mr. Kern: I would like to have ten days within which to file Exhibit 413-a.

Exam. Trezise: That is satisfactory.

[fol. 2873] E. F. Saur was recalled and, having been previously sworn, testified as follows:

Recross-examination.

By Mr. Martin:

(3271) Referring to a previous session when I was handed copies of the annual report of the Wheeling & Lake Erie Railway Company to the Interstate Commerce Commission for the years 1930 and 1931 and asked to recalculate for the record how I arrived at the figure of 8 mills per net ton mile as the average system expense charged to freight operations during those years, the method followed

in arriving at that result was to combine total freight operating expenses for the two years to be used as a dividend, and in like manner combining net ton miles for the two years to be used as a divisor. The quotient is 8 mills. That gives a figure of freight operating expenses per net ton mile.

In calculating my figure of 5.1 mills for the movement of coal to Cleveland, I divided into the figure of 77.9 cents shown as average cost per ton freight expenses in column 7, page 9, exhibit 146, the freight train miles shown (3272) for Cleveland on page 1 of that exhibit. The method I followed in connection with the cost study I have just explained in connection with the annual reports is the same in principle, because I was only dealing with one ton. I tried to explain why I used the train miles from Pine Valley to Cleveland. It is true I used a train mileage of 152.8 miles [fol. 2874] as my divisor in that instance, although the route mileage is only 138 miles. I said I did not know how many extra net ton miles were accumulated.

Re-direct examination.

By Mr. Orcutt:

(3272-73) I not only made a computation to see what the ton mile return would be had I used 138 miles, but I made a computation for all six places to show what the revenue per ton mile would be by first eliminating the puller mileage and another calculation by adding 4.5 miles. I do not consider that either one is correct, but I made all three calculations and there is not over four-tenths of a mill difference in any of them.

[fol. 2875] H. J. Adell was recalled and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Martin:

(3279-3280) I have previously testified in this hearing. I have seen the notes from which Mr. Kern testified in connection with my Exhibits 164 to 173 inclusive.

The following statement of Mr. Kern in cross-examination as to the purpose of these exhibits, is not correct. "In these exhibits (164 to 173 inclusive) Mr. Adell computes distances from mining points, from mines and shipping points and from active mines on the Wheeling & Lake Erie Railway to Cleveland, Lorain, Huron, Akron, Canton and Massillon via the shortest possible routes in connection with the Wheeling & Lake Erie Railway." Exhibits 164 to 173, inclusive, compute distances over the Wheeling & Lake Erie direct to the various destinations named with the exception that the distances to Akron, Ohio are via Wheeling & Lake Erie, Mogadore and A. C. & Y. It is possible to make shorter possible routes in connection with the Wheeling & Lake Erie than the Wheeling & Lake Erie direct. It is right that in these exhibits I used Wheeling & Lake Erie mileage only except as to Akron, Ohio, where I used the A. C. & Y. beyond Mogadore.

(3281) With reference to Mr. Kern's criticism in connection with my exhibits 174 to 183, inclusive, "I have noted, however, that on Exhibits 187, 188 and 189 he (Mr. Adell) has shown on page 2 of each a route from certain [fol. 2876] mines on the W. & L. E. Railway in the Middle District to Massillon, Ohio, via W. & L. E. Railway, Canton and B. & O. R. R. A check of the applicable tariff showed that no through rates are published from any mines on the W. & L. E. Railway in the Middle District to Massillon via this route." My comment is that Exhibits 187, 188 and 189 show that the short tariff routes have been used in all cases. There does appear to be a typographical error in connection with the explanation of those routes and the same should be corrected to read as follows: Exhibit 187, sheet 2, route C should read "Via W. & L. E. Ry.—Canton, Ohio—P. R. R." With that correction Exhibit 187 is now entirely correct. In other words, had the words in route "C" read "P. R. R." instead of "B. & O. R. R.," Mr. Kern's criticism could not have been made to this exhibit. (3282) Exhibit 188, sheet 3, route "B" should be corrected to read "Via W. & L. E. Ry. direct." Route "C" should be corrected to read: "Via W. & L. E. Ry.—Canton, Ohio —P. R. R." With those changes all the other details on the exhibit are correct.

Exhibit 189, sheet 2, route "C" should be corrected to read, "Via W. & L. E. Ry.—Canton, Ohio—P. R. R." With

that change Exhibit 189 is entirely correct. The correction I have read in Exhibit 188, page 3, cures the following criticism made by Mr. Kern: "On Exhibit 188, page 3, a route from W. & L. E. Ry. Middle District origins to Canton [fol. 2877] via Massillon and B. & O. R. R. appears. This route is not named in the tariff." As far as I know, this covers all of the criticisms which were made by Mr. Kern of the mileages appearing in my mileage exhibit.

Mr. Martin: May it be understood, Mr. Examiner, that we may correct the exhibits in the respects just testified to by Mr. Adell?

Examiner Trezise: Yes.

(Short recess taken.)

(3283) Mr. Ballard: I would like to offer as exhibits eight one-sheet statements showing the monthly Davis figures from the No. 8, Cambridge and Pittsburgh Districts to Akron, Canton, Cleveland, Lorain and Massillon for January, February, March, April, May, June, July, August, September and October, 1931, and 1932; showing also the totals by months and the percentages of the respective months to January as 100. We have a supply of these. I did not realize that when I spoke a little while ago.

For the purpose of the record I will identify the exhibit with respect to the heading. Exhibit 414 is the Ohio No. 8 District, 1931; Exhibit 415, Ohio 8 District, 1932. Exhibit 416, Pittsburgh District (including Moundsville), 1931; Exhibit 417, Pittsburgh District (including Moundsville), 1932; Exhibit 418, Pittsburgh District (excluding Moundsville), 1931; Exhibit 419, Pittsburgh District (excluding [fol. 2878] Moundsville), 1932; Exhibit 420, Cambridge District, 1931; Exhibit 421, Cambridge District, 1932.

(Exhibits 414, 415, 416, 417, 418, 419, 420 and 421, Witness Ballard, received in evidence).

Mr. Ballard: I would like to have the record show, if it does not show already, that there was a strike in the No. 8 (3284) Ohio District which commenced in April, 1932 and lasted into July.

Mr. Boden: Does that include all of July?

Mr. Ballard: Not all of it. It commenced April 1st and included almost all of the month of June.

I have here a working copy of what is referred to as our Indiana rate statement, headed as follows: "Comparative statement showing rates and average short tariff route distances from Brazil-Clinton and Linton-Sullivan Districts on the one hand and from Southern Crescent Districts on the other hand to Muncie, Indiana, compared with original 23922 scale."

Mr. Boden: Is it understood that those are additional figures of tonnage put in to include the months of November and December?

Mr. Ballard: By us?

Mr. Boden: Yes.

Mr. Ballard: No.

Mr. Boden: I understand there was some reservation [fol. 2879] made about putting in figures for the months of November and December, 1932.

Mr. Ballard: Mr. Kern made the reservation and put them in. At counsel's suggestion I am going to put this Indiana rate exhibit in through Mr. Ackerman and ask him a few questions in explanation of it.

(3285) Mr. M. Carter Hall: Since your Honor's ruling on Mr. Ballard's motion for a continuance and in order to give him further time, counsel for the petitioning respondents are willing to agree that within ten days from the adjournment of this hearing Mr. Ballard may have the right to file a statement in reply to petitioning respondents' witnesses' criticisms of Mr. Ackerman's theory, pointing out errors of fact and commenting on such errors. This agreement not to include revision or filing of revised, supplemental or new exhibits. Counsel for petitioning respondents are also willing to agree that Mr. Martin should have practically the same privilege and be allowed ten days in which to file a statement in reply to petitioning respondents' witnesses' criticisms of Mr. Durham's cost study. In addition to the above suggestion by respondents' counsel, it is understood that Mr. Ballard has outstanding one or two reservations already of record which have been mentioned—one with respect to filing an Indiana exhibit and another with respect to filing some exhibit or other about Mr. Sprague's exhibit, and the agreement of respondents' counsel, of course, is not intended to take the

[fol. 2880] place of any outstanding reservations that Mr. Ballard may have.

It is of course understood, in consideration of this agreement by respondents' counsel, that we are to have ten days after such statements may be filed within which to make similar (3286) replies.

Mr. Ballard: That is, to make replies to these statements within the same limits? That is satisfactory.

Mr. M. Carter Hall: Does that suit you, Mr. Martin?

Mr. Martin: Yes, sir.

Examiner Trezise: There seems to be no objection to that.

C. B. Ackerman was recalled and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Ballard:

(3286-3287) I prepared the exhibit entitled "Comparative statement showing rates and averages short tariff route distances from Brazil-Clinton and Linton-Sullivan Districts on the one hand and from Southern Crescent Districts on the other hand to Muncie, Indiana, compared with original 23922 scale." The source of the exhibit is the mileage tariffs referred to in my distance tables from the South, including also the tariff of the Big Four Railroad which is not referred to there specifically by number. I also used the [fol. 2881] mileage tariffs of the C. & E. I., which is referred to in my other distance exhibit, and in addition to that there is the Big Four. For the distances from Brazil-Clinton and Linton-Sullivan to Muncie, I used the Indiana distance tariffs of the various railroads shown. The routes are shown on the exhibit. (3288) The distance tariffs I used were the distance tariffs of those railroads. I computed the average in the same manner, that is, so far as the mathematical process was concerned, as the average distances to and from other points already testified to by me in the case, and that was via short tariff routes. I used Muncie as a destination from the Linton-Sullivan and Brazil-Clinton groups, and I show the rate as $1.48. That rate applies to a destination group in that territory. I

selected thirteen destinations. Muncie is simply one point in that destination group.

I have undertaken to work a destination group average for the purpose of comparing it with the individual Muncie distance in order to say whether Muncie was representative of the destination group. I found the average distance computed in the same manner from all the origins in Indiana, Brazil-Clinton (3289), Linton-Sullivan to thirteen destinations resulted in an average within one mile of the average to Muncie. I did not pursue the same process with respect to the average distances from the Southern Crescents to [fol. 2882] Muncie. The rates from the Southern Crescents to Muncie are blanketed to other destination territory. I selected Muncie as representative, however. I secured from the Davis reports and the Galligan figures the tonnages moving from the Southern Crescents to a destination group described as Indiana Gas Belt points and from the Indiana Districts covered by this exhibit to the same group of destinations for the year 1931. From what is commonly termed the low volatile group in the South to the Indiana Gas Belt for the year 1931 there were 217,808 tons, and from the high volatile district in the South, 873,570 tons. (3290) From the Brazil-Clinton group, 31,100 tons, and from the Linton-Sullivan group, 165,962 tons. Those latter figures are from the Galligan Reports. Those are 1931 figures.

The Exhibit contains the phrase, "Southern low volatile Crescent Districts." That phrase is not strictly accurate. There are some high volatile districts in those Outer Crescent groups, and I take the rate shown on the exhibit. The important ones are the Clinch Valley No. 1 and 2, Tug River, Oakdale and Stonega. The names of the districts enumerated under that sub-heading are shown on the exhibit.

(3291) In calculating these distances in the Southern District I use the same origin mines that I showed in my [fols. 2883 & 2884] prior exhibits dealing with distances from the Southern fields to Northeastern Ohio destinations.

Mr. Ballard. I ask leave to file within ten days an exhibit in the form of the one referred to by the witness and serve copies on all parties of record.

Mr. M. Carter Hall: No objection.

Cross-examination.

By Mr. M. Carter Hall:

(3291) Unfortunately I did not bring the memorandum with me as to the thirteen destinations that I selected and from which I made the average composite distances to compare with Muncie. I will try to remember them. There was Muncie, Losantville, Hagerstown, Cambridge City, Beesons, I believe Rushville, Union City, Winchester, Anderson, Hartford City, I believe Richmond, and, Cottage Grove, New Castle. To the best of my recollection, those are the towns. They are all in the vicinity of Muncie.

(3292) The number of mines shown from Southern high volatile Crescent Districts and from Southern low volatile Crescent Districts are the same mines I used in my other distance exhibits from the South. They are all enumerated on these exhibits and I have just copied that same list and the distances and the junction points.

The source of authority was all thoroughly explained. I can explain it again if you wish. With the exception of the Pennsylvania Railroad they are taken from the carrier's mine lists.

By Mr. Day:

[fol. 2885] Mr. Waffle furnished me the mileages to Muncie from the two Indiana districts shown on my exhibit, and I used his figures. He showed me the exhibit showing the rate that applied, showing that fact.

I don't think the rate of $1.48 from the Brazil-Clinton and Linton-Sullivan Districts to Muncie and these other points that you have enumerated applies to all stations east of Indianapolis. I don't believe there are any points between Indianapolis and Anderson to which it would also apply. I think it begins at Anderson; that is my recollection. To stations west of Anderson on the Big Four main line it would be a lower rate. I don't know how the distances you show from the Crescent Districts compare with mileages which the Interstate Commerce Commission has used in its decisions affecting Muncie and related points (3293).

Mr. Ballard: That is all, your Honor. I think the record accurately states whatever other reservations there are. Mr. Hall stated it in satisfactory terms.

Mr. Day: So the record may be clear and I may be clear on it, did you say, Mr. Ballard, that when you filed this exhibit within ten days or within the period of leave granted by the Examiner you would show the tariff authorities?

Mr. Ballard: I did not say that, but I now say it.

Mr. Day: Another question, if I may: When you attempt [fol. 2886] to apply the 23922 scale to these distances to Muncie, did you use the original formula in 23922 or that prescribed in the second decision?

Mr. Ackerman: I use the original formula.

Mr. Ballard: Meaning the original scale, that is what you intended to ask. It is so stated in the heading of the exhibit.

Mr. Day: The formula for figuring mileages is what I had in mind.

Mr. Ballard: That is true, too.

Mr. Day: I was to have furnished for the record figures (3294) for the New York Central Lines other than the Ohio Central showing the carloadings for the period from January 1, 1932 to August 1, 1932 compared with the previous year and then for the period from August 1, 1932 to January 28, 1933. I find that those figures have not been incorporated in the record in conformity with the statement I made that they would be furnished, and I would like to have ten days in which to supply that information.

Exam. Trezise: If there is no objection Mr. Day will be given ten days to file those figures he has just mentioned.

Mr. Ballard: I think there are one or two outstanding matters of that kind in connection with my cross-examination yesterday of the operating witnesses. One of them, I think Mr. Davenport, was going to furnish some information with respect to the 33-mile haul on the New York Central in the No. 8 District from the last mine to Minerva. [fol. 2887] He said he had it all worked out and I understood he was going to furnish it before the close of the day yesterday.

Mr. M. Carter Hall: Subject to corrections, and answering your question, I think I can give you the information. That is the distance within which the coal was collected as shown by his direct testimony, 14 miles. The last mine therefore nearest towards Bergholz would therefore be 14 miles away from the assembly point—I mean from the mine district. Going north from Dillonvale you go 14 miles to

the most (3295) northerly mine and then you come on to Bergholz, and that is 20 miles from Dillonvale, and then from Dillonvale to Minerva, 23 miles more—Bergholz to Minerva, 23 miles, and that makes 43 miles.

Mr. Ballard: The request I referred was not that. I think this is on the record already. He said that the last part of that assembly haul was really line haul service. I don't mean that in any technical sense, but that it was getting towards the destination, and after having left all of the mines and that the inclusion of the locomotive performance of these miles would have the effect of changing the results for that route, and he said he had made that computation and would furnish it.

Mr. M. Carter Hall: I think that is correct. What you want is the difference in Ackerman's figures, or Ackerman's formula if the assembly were made at Bergholz instead of at Minerva, and he has got that figure.

[fol. 2888] Mr. Ballard: Wasn't there something about the distance from Brady Lake to Minerva? He was going to furnish the correct distance. I don't remember whether there was something more to come from Mr. Conrad with respect to the tractive effort of the N. & W. locomotives.

Mr. Hall: I think not, because he asked me and I understood it was waived, and I so told him.

Mr. Ballard: We will let the record show.

Mr. Hall: All right.

Mr. Ballard: If there is something further to come I will write you about it, Mr. Hall?

Mr. Hall: I am not sure as to this first thing.

Mr. Ballard: Mr. Hall understands it, I am quite certain.

Exam. Trezise: Are your ready for the dates for the filing of memoranda and briefs?

Mr. Ballard: We are ready.

Exam. Trezise: In accordance with the agreement between you gentlemen with respect to the memorandum that is to be filed at these ten-day periods after the hearing, the first date will be fixed as March 1st for you memoranda, Mr. Ballard and Mr. Martin, and for the other parties March 11th, and the date for filing briefs April 10, 1933.

The Examiner understands that there will be a proposed report in this case.

If there is nothing further the hearing will be closed.

(Whereupon, at 5 o'clock P. M., February 17, 1933 the hearing of the above-entitled matter was closed.)

[fol. 2889] VERIFIED STATEMENT OF EVIDENCE ON BEHALF OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY, THE LORAIN & WEST VIRGINIA RAILWAY COMPANY, AND THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY IN REPLY TO REBUTTAL EVIDENCE OF PETITIONING RESPONDENTS RELATING TO EXHIBIT NO. 146

To the Interstate Commerce Commission:

The following verified statement of evidence is filed on behalf of The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, and The Akron, Canton & Youngstown Railway Company in reply to the rebuttal evidence of petitioning carriers relating to Exhibit No. 146, the cost study introduced by Geo. Durham, Vice President and General Manager of The Wheeling and Lake Erie Railway Company. This statement has been limited to a reply to specific statements by Witnesses Triem and Saur for the petitioning carriers. No attempt has been made to reply to all of the argumentative statements, or to all of the general unsupported statements.

(1) The average number of gross tons per through train from Pine Valley to destinations has been accurately determined.

At page 2784 of the transcript, Witness W. R. Triem testified:

"We must take issue with the method pursued in obtaining the average number of gross tons per through train on each of pages 1 to 6 inclusive. There is no method that we have found to be satisfactory in determining the average tonnage of trains, except the one generally accepted and prescribed by the Interstate Commerce Commission, namely, to find out the number of gross ton miles involved and divide by the number of train miles."

[fol. 2890] Mr. Triem's criticism is based on the fact that the mileage of the puller train used between Pine Valley and Jewett in lieu of a helper engine was not added to the

line haul mileage which was used as a divisor in determining the average through train tonnages found on pages 1 to 6 inclusive on Exhibit No. 146. The criticism is theoretical and overlooks the practical situation explained at pages 975, 2073, 2164 and 2165 of the record. As there shown the puller service (the mileage of which Mr. Triem asserts should have been added to the line haul mileage) is merely a substitute for a helper engine. If such a helper engine had been used instead of the puller train, there would not be even a theoretical basis for Mr. Triem's contention; so that from a practical point of view, the controversy is one of terminology, particularly since the full cost of operating the puller locomotive has been included in the cost study by adding the puller mileage, both loaded and light, to the train-miles and the locomotive-miles of the average through train from Pine Valley to each of the six destinations shown in the study.

The method advocated by Mr. Triem, namely the division of the gross ton-miles by the number of train-miles is neither generally accepted, nor is it prescribed by the Interstate Commerce Commission as a means of finding the average tonnage of trains. It is true that at one time the Commission carried on its Form OSA Report an item known as No. 21, "gross tons per train," which was determined in the manner Mr. Triem suggests. However, effective January 1, 1930, this average was changed to "gross ton-miles per train-mile," and the average of "gross tons per train," based on this sort of calculation, is no longer required or recognized by the Commission.

[fol. 2891] (2) The criticism of the calculation to determine the number of service units required for the return movement of empty cars arises from a misunderstanding of the calculation and a confusion of it with operating practice.

From his rebuttal testimony, and his cross-examination thereon, it is clear that Witness Triem did not understand the calculation employed in line "L" of pages 1 to 6 of Exhibit No. 146, which, as frequently explained in the record, was for the purpose of determining the cost of returning empty cars from the six destinations to the mines. That he did not understand the calculation, and that he

confused it with actual operating practice, is evident by his references to the "mythical 100-car train", and to "this hypothetical empty train (described line "L", page 1) which stops 67 miles from Cleveland", etc.

The calculation of service units on Line "L", pages 1 to 6, makes no mention of the actual operation of a train, nor does it indicate the practice which is employed in the return of empty cars. Neither is there anything in the record indicating that it was ever expected that a train of 100 empty cars would be operated 67 miles and stopped. As a matter of fact, the record shows specifically that this was not intended. (See pages 986, 2059, 2061, 2064 and 2065).

As heretofore stated, the calculations appearing in line "L" on page 1 of the exhibit are intended solely to reflect the service units,—that is, the number of gross ton-miles, car-miles, locomotive-miles and train-miles—required for the return of 48 empty cars from Cleveland to the mines, which for convenience have been based upon the movement of such empty cars in a 100-car train. The calculations on line "L", pages 2 to 6, of the exhibit are made in a similar fashion to show the service units required for [fol. 2892] the return of empty cars from the other five destinations. At page 986 of the record, in describing the return of empty cars from Cleveland, it is stated that "as a practical matter, these cars are returned in regularly scheduled trains along with such other empties and/or loaded cars as there may be in such train."

There is nothing difficult, or complicated, in connection with returning empty coal cars from these six destinations to the Ohio No. 8 Coal District. On the contrary this service is performed in a very regular and orderly manner. For the past 9-3/4 years, few, if any, of the numerous hypothetical difficulties in returning empty cars recited at pages 2785, 2786 and 2787 of Witness Triem's rebuttal testimony have been experienced on the Wheeling and Lake Erie Railway.

(3) Contrary to the testimony of Witness Saur, the operating ratios of The Wheeling and Lake Erie Railway Company for the years 1929, 1930 and 1931 indicate that its operations are on a profitable basis.

At page 2794 of the transcript Witness E. F. Saur testified as follows:

"As a preliminary to appraising the merit or demerit of a so-called "cost study" as applied to a particular traffic such as coal, the first thing that would naturally be investigated would be the operating ratio of the W. & L. E. Railroad, which was found to be 68.87 per cent in 1929, 73.22 per cent in 1930, and 79.67 per cent in 1931. From this it would appear to an accountant that the W. & L. E. system of operations were not on a very profitable basis."

A comparison of these operating ratios with the operating ratios for the same years of the three principal petitioning carriers serving the Ohio No. 8 District indicates the very opposite of Mr. Saur's contention. This comparison is shown in the statement appearing on the following page.

[fol. 2893]

Statement Showing Operating Ratios (Per Cent Railway Operating Expenses of Railway Operating Revenue) of The Wheeling and Lake Erie Railway Company; the Pennsylvania Railroad Company; the New York Central Railroad Company; and The Baltimore and Ohio Railroad Company, for the Years 1929, 1930 and 1931

Expenses	The W. and L. E. Ry. Co.			The Penna. R. R. Co.			The N. Y. C. R. R. Co.			The B. and O. R. R. Co.		
	1929	1930	1931	1929	1930	1931	1929	1930	1931	1929	1930	1931
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Maintenance of Way and Maintenance of Equipment	35.7%	37.2%	37.8%	32.1%	31.4%	31.9%	34.6%	35.2%	34.0%	33.1%	31.0%	28.4%
Transportation	28.2%	30.0%	33.8%	34.5%	37.0%	39.2%	34.4%	36.4%	38.3%	33.8%	35.1%	37.5%
Total	68.9%	73.2%	79.7%	72.2%	74.9%	78.8%	74.8%	78.7%	80.3%	73.6%	74.1%	75.7%

Source: Interstate Commerce Commission Comparative Statement of Operating Averages—File No. 32200.

[fol. 2894] On this statement the percentages of operating revenues expended for maintenance, and the percentages of operating revenues expended for transportation, have been shown separately. The total operating ratios for each year are shown on the botton line.

It may be noted that, as to total operating ratios for the years 1929 and 1930, the showing of The Wheeling and Lake Erie Railway Company is more favorable than that of any of the other three lines, and that for the year 1931 the showing of The Wheeling and Lake Erie Railway Company is more favorable than that of the New York Central Railroad Company, nine tenth of one percent in excess of the operating ratio of the Pennsylvania Railroad Company, and four percent in excess of the operating ratio of the Baltimore and Ohio Railroad Company. A further calculation shows that the average total operating ratios of these four railroads for the three years, 1929 to 1931 inclusive, were as follows:

The Wheeling and Lake Erie Railway Company	72.9%
Pennsylvania Railroad Company	74.8%
New York Central Railroad Company	77.5%
Baltimore and Ohio Railroad Company	74.3%

The relatively better showing of The Wheeling and Lake Erie Railway Company for these three years is further emphasized by a comparison of its ratio for maintenance of way and equipment with similar ratios of the other three companies. This comparison shows that the Wheeling and Lake Erie's maintenance ratio was higher in each of the years than the ratios of each of the other three companies. Despite this fact the Wheeling and Lake Erie's average total operating ratio for the three year period was lower than the average total operating ratios of each of the other three companies for the same period. This can be explained only upon the ground that the Wheeling's transportation ratio for the three years is substantially lower than the transportation ratios of the other three companies, [fol. 2895] during the same years. This fact is readily apparent from the statement. These facts indicate a high standard of maintenance and a high degree of efficiency in operation on the Wheeling and Lake Erie. They justify the conclusion that insofar as the operating ratio may re-

flect, or indicate, profitableness of operation, The Wheeling and Lake Erie Railway Company is shown to be upon a much more favorable basis than the Pennsylvania Railroad Company, or the New York Central Railroad Company, or the Baltimore and Ohio Railroad Company, for the three years selected by Mr. Saur.

(4) The average system cost per ton-mile for transporting all classes of freight cannot represent the cost per ton-mile of transporting coal only.

At pages 2794 and 2795 of the transcript Mr. Saur stated that:

"From the Wheeling & Lake Erie annual reports for the years 1930 and 1931, it appears that total expenses charged to freight operations amounted to approximately 8 mills per net ton mile, that is the average system expense. Exhibit No. 146, however, shows estimated costs per net ton mile for handling the coal included in the study as follows:

Ohio No. 8	to Cleveland	5.1 mills
	to Lorain	4.8 "
	to Huron	4.8 "
	to Canton	6.9 "
	to Massillon	7.2 "
	to Akron	6.7 "

Such a wide discrepancy in the estimated expenses per net ton mile from the actual total system expenses indicates that the statistical analysis offered as Exhibit 146 cannot reflect all of the costs involved in handling the coal traffic under discussion. Such a conclusion is further suggested by the fact that of the total tonnage of all traffic originating [fol. 2896] on the W. & L. E. in the years 1930 and 1931, 43 per cent was bituminous coal."

Several serious errors occur in the statement of Mr. Saur just quoted. In the first place it is a well known fact that commodities which load relatively heavy are transported at lower costs than commodities which load relatively light. As to the Wheeling and Lake Erie Railway, the average loading per car of coal during the years 1930 and 1931 was approximately 52 percent greater than the average loading per car of all other freight handled during the same period.

From this the conclusion must follow that the average cost per net ton-mile of handling all freight does not accurately reflect the cost of handling coal, particularly since coal constituted only 36.03 percent of all traffic handled during the years 1930 and 1931.

Mr. Saur in his criticism stated that the total expenses of The Wheeling and Lake Erie Railway Company for the years 1930 and 1931 resulted in an average cost per net ton-mile, for all freight traffic handled of 8 mills, but in the same connection stated that of the total tonnage of all freight traffic originating on the Wheeling and Lake Erie Railway in the years 1930 and 1931, 43 percent was bituminous coal. The impropriety of reaching a conclusion by comparing only the tons of coal originated with the total tons of all freight originated instead of comparing the total tons of coal transported with the total tons of all freight transported is readily apparent.

In the statement just quoted, Mr. Saur attempted to make a comparison between the average system cost of 8 mills per net ton-mile and what he alleged to be the "estimated cost per net ton mile for handling the coal included in the study," ranging from 4.8 mills for Lorain and Huron to 7.2 mills for Massillon.

On cross-examination it appeared that while he derived the figure of 8 mills per net ton-mile in the customary man-[fol. 2897] ner by dividing the total ton-miles of revenue freight for the years 1930 and 1931 into the total freight operating expenses for the same years, he pursued an entirely different method of arriving at the so-called estimated cost per net ton-mile for handling coal. He divided the average costs per ton shown on line "L" on pages 9 and 10 of Exhibit 146 by the average freight train-miles appearing on pages 1 to 6 inclusive of the exhibit. For example, in determining the figure of 5.1 mills per net ton-mile for transporting coal from the Ohio No. 8 District to Cleveland he divided the average cost per ton (freight expenses) of 77.9 cents by 152.8 train-miles, in spite of the fact that from testimony previously given in explanation of Exhibit 146 it appeared that the actual distance which this coal moves between Pine Valley and Cleveland does not exceed 138 miles. The transcript at page 974 shows that the average distance coal is moved in assembling service is 4.5 miles

and at page 986 it is further shown that average line haul of all coal begins about 6.5 miles west of Pine Valley. As the distance from Pine Valley to Cleveland is 138 miles it is readily apparent that the actual average distance from the mines to Cleveland is only 136 miles. Had the 138 miles been used as the divisor, the result as to Cleveland would have been 5.64 mills instead of 5.1 mills.

Application of the correct method throughout shows that the cost per net ton of transporting coal from the Ohio No. 8 District to each of the six destinations is materially greater than the cost obtained by Mr. Saur. This is reflected in the following tabulation:

[fol. 2898]

Destination	Mr. Saur's Cost Per Net Ton-mile (Mills)	Correct Cost Per Net Ton-mile (Mills)
Cleveland	5.1	5.64
Lorain	4.8	5.38
Huron	4.8	5.31
Canton	6.9	8.17
Massillon	7.2	8.68
Akron	6.7	7.76

When these considerations are taken into account it is impossible to reach the conclusion advanced by Mr. Saur, that the cost shown in Exhibit No. 146 does not reflect all of the cost involved in handling the coal traffic under discussion.

(5) The application of the average costs per gross ton-mile of maintenance of way and structures to the gross ton-miles involved in the cost study adequately charges coal traffic for the use of way and structures.

At pages 2795 and 2796 of the transcript Mr. Saur testified as follows:

"On Page 7, Item A, is encountered in track maintenance a method of apportioning costs that seems to us objectionable throughout the entire analysis. Total expenses are combined by Mr. Durham with total units to develop system averages and these are then applied generally to specific operations, which operations are not in themselves spread over the system. That this is a fundamental objection to so-called "cost studies" has frequently been held

[fol. 2899] by the Commission. * * * For instance, Track Maintenance, Item A-1 and 2—this expense is proportioned to gross ton miles with no recognition of unusual expenses that might have inflated the total figure, although such expense occurred in districts affected by this analysis. At the same time no recognition is made of those districts where the heavy volume of traffic, character of traffic, character of locomotives and cars, etc., would seem to require a greater expense per mile of track than in other locations where the contrary of such conditions exist.''

The Wheeling and Lake Erie Railway is a compact property located in a territory where there is no great variation in climatic conditions. The variation in the terrain is not such as to result in a material variation in expense of maintenance of way and structures on any portion of the line, except as such expense varies with use. Therefore the determination and application of unit costs in the manner used in the cost study, namely, upon a gross ton-mile basis, has the effect of amply charging this coal traffic for use of tracks and appurtenant structures, particularly since the period used for determining the unit costs was one in which the property was fully maintained and during which there were no extraordinary expenses on any portion of the line. It follows, therefore, that there is no basis for the objection which Mr. Saur has characterized as ''fundamental'' insofar as it might apply to the Wheeling and Lake Erie Railway.

Mr. Saur's criticism overlooks the fundamental fact that as to railroad property in use there is a certain constant expense for maintenance of way and structures necessary [fol. 2900] in order to keep it in condition for service, that does not vary with the quantity of use.

The proportion of the maintenance of way and structure expense, which varies with use, is estimated to be approximately one-third. This proportion was used by the Interstate Commerce Commission in Finance Docket No. 1606, In the Matter of Final Settlement Under Section 209 of the Transportation Act 1920, 70 I. C. C. 711, 743 and represents the maximum proportion of the expense, which, under ordinary conditions, will be affected by the increase, or decrease, in traffic.

To illustrate, given a mile of track over which a volume of traffic amounting to 5,000,000 gross tons moves per annum, with an annual cost for maintenance of way and structures of $3,000.00, the cost per 1000 gross ton-miles would be 60 cents. If the tonnage moving is increased to 10,000,000 gross tons, the expense will be increased to $4,000.00 per mile or to 40 cents per 1000 gross ton-miles. Thus it will be seen that while the use has doubled the cost of maintenance of way and structures per gross ton-mile has increased by 33-1/3 percent.

It is true, as just indicated, that heavy traffic over a certain portion of the line may necessitate greater maintenance expenditures per mile of track than for portions of the line less frequently used. However, since, as shown, such expenditures would not increase in proportion to the increase in the volume of traffic, and since there would be a greater volume of traffic over which to spread the greater cost, the average unit cost per 1000 gross ton-miles would decrease with the increase in volume of traffic. In the case of the Wheeling and Lake Erie Railway, the average density of traffic upon those portions of the line over which this [fol. 2901] coal is transported is greater than the average density of traffic for the entire railroad. Therefore, in the cost study the transportation of coal over such portion of the line has been overcharged rather than undercharged for use of tracks and appurtenant structures.

At page 2797 of the transcript Mr. Saur stated:

"The division of track maintenance as between passenger and freight on the W. & L. E. is, we understand, in proportion to coal issued to freight and passenger engines, respectively. It is of interest to point out here that the I. C. C. instructions provide for a division of this expense by coal issues whereas this study divides the resultant freight expenses on a gross ton mile basis."

While Mr. Saur has not said that the cost study is wrong in this respect, his statement may carry that implication. It is true that the Interstate Commerce Commission's instructions provide for the separation of the cost of maintaining road tracks (which include all tracks other than those in yards where a separate switching service is maintained) as between freight and passenger on the basis of fuel issues.

However, after such separation has been made as between freight and passenger service, the Commission has not indicated that in the determination of costs of transporting commodities handled in freight trains, charges for the use of tracks and appurtenant structures should be ascertained by using fuel issues as a basis. In fact, such a basis is impossible of application for the reason that the fuel issues, the cost of which is chargeable to road freight service, are not and cannot be further segregated by commodities transported in freight trains. In determining unit costs of maintaining road tracks and appurtenant structures for the account of freight service it is, therefore, necessary to select [fol. 2902] some service unit by which the quantity and cost of use may be appropriately measured. The gross ton-mile basis meets this requirement and has therefore been used.

(6) Costs of maintenance of way and structures for the two-year period 1930 and 1931, are representative for use in the cost study.

In connection with the use of the average cost per 1000 gross ton-miles for maintenance of way and structures, which was determined from actual operations for the years 1930 and 1931, Mr. Saur states at page 2796 of the transcript that a "rough estimate" shows that if the five year period, 1927 to 1931, both inclusive, had been used a higher cost would have been found, and intimates that such a figure would have been more nearly representative than the average for the years 1930 and 1931. While it is true that the average amount expended per 1000 gross ton-miles for maintenance of way and structures during the five year period, 1927 to 1931, both inclusive, was somewhat greater than the average cost per 1000 gross ton-miles for the same account during the years 1930 and 1931, it does not follow that the five year period is more representative. This will be apparent when attention is called to the fact that during the years 1927, 1928 and 1929 labor costs were relatively much higher than in subsequent years, and much higher than they are likely to be for several years to come. This is due to the fact that during 1927, 1928 and 1929 labor was less efficient than in subsequent years, and to the fact that a reduction in rates of wages of labor was made effective in 1932. Moreover during 1927, 1928 and 1929 the cost and

number of cross ties renewed were very much greater than may reasonably be expected for any similar period in the future. Thus during 1930 and 1931 the average cost of treated ties was approximately 15 percent less than the average cost of such ties in 1927, 1928 and 1929, while the average cost of untreated ties was approximately 21 per- [fol. 2903] cent less. The necessity for the unusually heavy tie renewals during 1927, 1928 and 1929 arose from the fact that during a previous renewal period (which extended from about 1916 to 1920) the quality of cross ties available was poor. Very few of the ties placed in the track at that time were creosoted and no tie plates were used, except occasionally on very sharp curves. Furthermore through the years 1917 to 1925 the roadbed was insufficiently drained. All of these conditions operated to concentrate a heavy burden of expense for maintenance of way and structures into the years 1925 to 1929 inclusive. However, during that period the policy of using a large percentage of treated cross ties had been adopted. Adequate tie plates were used to protect ties from mechanical destruction, and the drainage was very materially improved. These improvements—while they were expensive and increased the charges temporarily—resulted and will result for the future in substantial reductions in the relative cost of maintenance of way. Thus it will be seen that the inclusion of the expenses for the years 1927, 1928, and 1929 in a base for determining the unit cost of maintenance of way and structures for the future would result in (a) undue inflation of such unit cost per se and (b) failure to recognize and to take into consideration the economies which will continue to result from the excess maintenance and improvements already referred to.

As the property was fully maintained during the years 1930 and 1931 the maintenance costs for those years are representative for use in the cost study.

[fol. 2904] (7) The apportionment of cost of maintenance of water stations between road and yard on the basis of water used is proper.

At page 2797 of the transcript Mr. Saur appears to criticize apportionment of water stations between road and yard in the following language:

"Account 231, Water Stations, Item A-4, amounting to $20,427.00, has been divided between road locomotive expenses and yard expenses on the basis of the amounts of water used by road and yard locomotives instead of on the fuel issues basis as prescribed by accounting instructions of the I. C. C."

In the study the assignment on the basis of water used for road and yard locomotives was made for the reason that it seemed proper to charge each particular service upon the basis of benefit or use. A comparison of the two bases shows that had the fuel basis been used instead of the water basis, the proportion chargeable to road locomotive expenses would have been increased from 69.17 percent to 70.41 percent, and the proportion chargeable to yard expenses would have been decreased from 30.83 percent to 29.59 percent. This slight change would have made no difference in the cost obtained for transporting coal to any of the six destinations.

(8) An adequate charge has been made in the cost study to dispatching for the maintenance of telegraph and telephone lines.

Mr. Saur expresses doubt at page 2798 of the transcript concerning the apportionment to dispatching of the amount shown in Item A-7 (page 7) for maintenance of telegraph and telephone lines.

[fol. 2905] During the years 1930 and 1931 The Wheeling and Lake Erie Railway Company owned and maintained approximately 2,487 miles of telegraph and telephone wires. The maintenance and operation of these lines are under the immediate supervision of the General Foreman —Telegraph and Telephone. A careful study was made by him to determine the use made of the various wire lines. This study developed that 960 miles were used exclusively for dispatching trains; that 337 miles were used exclusively for other operating purposes such as communication between general, division and traffic offices, and in the operation of terminals, shops, etc.; and that 1,190 miles were used jointly for dispatching and such other operating purposes. Based upon his intimate knowledge of the use made of the 1,190 miles used jointly for dispatching and other operating purposes, he considered that a 50 percent divi-

sion of the use of such common lines as between dispatching and other operating purposes would fairly represent the respective uses made thereof. This resulted in the apportionment of approximately 62½ percent of the total sum of $37,736.00 expended for maintaining telegraph and telephone lines to dispatching service which with the addition of a proportion of supervision and overhead charges resulted in a total charge of $29,743.00 to dispatching service. This is deemed to be a reasonable and fair charge.

(9) "All other" expenses of maintenance of way, maintenance of equipment and transportation (Items A-8, B-8, and C-17) are properly distributed on a proportional basis to various classes of directly assigned expenses, (Columns 2-12 inclusive, page 7).

Distribution of the sum of $2,190,043 representing the sum of items A-8, B-8 and C-17 ("all other" expenses of maintenance of way, maintenance of equipment and transportation) representing 10.86 percent of the total freight operating expenses was criticized in a general manner by Witness Triem (Tr. 2788) and more specifically by Wit- [fol. 2906] ness Saur (Tr. 2798, 2800 and 2803). This section of the reply is in rebuttal of the testimony of both witnesses on this point. Their criticism was directed both to the methods used and to the results obtained.

As several of the more important items of undistributed expense relating to maintenance of way and structures, maintenance of equipment, and transportation are similar in character, the reply will be based upon the total of each of such items, although distribution was made separately under each of those general groups of expenses.

The $2,190,043 includes the following expenses:

		Amount	Per cent
Superintendence		$1,211,455	55.3
Inuries to persons		278,832	12.7
Stationery and printing		71,832	3.3
Insurance		47,265	2.2
Protection of public highway crossings		161,367	7.4
Maintenance and operation of signals and interlockers		72,872	3.3
Maintenance and operation of telegraph and telephone lines (other than dispatching)		48,666	2.2
Loss, damage and live stock claims		75,050	3.4
Roadway, buildings, machines, tools and work equipment		109,915	5.0
Joint facilities—Debit	$296,039		
" " —Credit	279,578		
		16,461	.8
Other minor items		96,328	4.4
Total		$2,190,043	100.0

By far the largest item is that of superintendence, which represents 55 percent of the total. This item includes the pay and traveling expenses of general officers in charge of maintenance and operations, their assistants, engineering and clerical staffs, rent of offices, and office supplies and expenses. The duties of such officers and employes cover all activities relating to the maintenance and operation of the physical railroad plant. Obviously, the pay, traveling and office expenses of such officers and employes cannot be directly assigned to the maintenance of individual classes of tracks, structures, locomotives or cars, or to the operation of stations, trains, yards, and facilities used in connection therewith. The assignment of such expenses on a percentage basis is the only practicable and reason-[fol. 2907] able method of distribution which can be used.

Expenses on account of injuries to persons represent approximately 12.7 percent of the total undistributed amount. All classes of employes are subject to injuries in the performance of their duties in maintaining and operating the property. This item also includes expenses on account of persons injured in connection with transportation operations. The Interstate Commerce Commission requires no separation of such expense, other than distribution as between the three general groups of expenses, namely maintenance of way and structures, maintenance of equipment, and transportation. As accounts therefore do not reflect further allocation of such expenses, their division on a percentage basis is appropriate. The same is true of stationery and printing and insurance, the combined items representing approximately 5.5 percent of the total.

The cost of protecting street and highway crossings, chargeable to account 405, represents 7.4 percent of this undistributed expense. The largest item of expense included in that account is the pay of gate keepers and flagmen. Witness Saur stated in his testimony, at page 2803 of the transcript, that the charges to that account are approximately all road. Obviously that is not a fact for the reason that approximately 80 percent of the crossings on the Wheeling and Lake Erie Railway protected by gatemen and watchmen are located within yard switching limits and are used largely in both train and yard operations. Thus anything like a reasonably complete allocation of the

charges to that account as between road and yard is not possible. The distribution as made between road and yard on the percentage division of other transportation accounts is deemed fair.

In the same connection Witness Saur further stated that [fol. 2908] charges to such accounts as 415—Clearing wrecks, 416—Damage to property, 417—Damage to live stock on right of way, and 418—Loss and damage—Freight, are also approximately all road. This statement is incorrect. The history of operations on the Wheeling and Lake Erie Railway shows that a substantial portion of such expenses is attributable to yard switching operations. Thus, more derailments occur in yards than on the road, there is more damage to freight in yards than on the road due to the shocks incident to switching, and substantially all of the loss of freight occurs from pilfering in yards. Again the division as between road and yard on the basis of other transportation accounts is considered equitable.

Considerable criticism was made with respect to joint facility accounts which were included in the undistributed expenses and divided on a percentage basis. The charges to such debit accounts aggregate $296,039, and the credits to the credit accounts $279,578, leaving a net debit of only $16,461, which is relatively small.

The other items of a miscellaneous character shown above were similarly distributed on a percentage basis under their respective general groups.

The final distribution of the $2,190,043 resulted in $1,482,216, or approximately 67.7 percent, having being charged to road operations, $582,109, or 26.6 percent to yard operations, and $125,718, or 5.7 percent to special expense, (Column 12) covering maintenance and operation of coal and ore docks and the handling of l. c. l. freight. This final distribution is representative.

As fully explained at pages 2178 and 2179 of the transcript the particular method used in assigning overhead or undistributed expenses to the cost of transporting coal [fol. 2909] can have but very little effect upon the final cost per ton..

(10) The arbitrary adjustment in Accounts 388 and 400 advocated by Mr. Saur is not required.

At page 2799 of the transcript Mr. Saur stated:

"'The Commission recognizes that there is a wide variation in type of locomotives handled and says in the instructions as to the division of accounts that an arbitrary adjustment should be made in Accounts 388 and 400, where there was a wide difference. Apparently this has received no consideration by the Wheeling & Lake Erie, and which has the effect of overcharging Account 388.''

By reference to the text of Account 388, Enginehouse expenses—Yard, and to Account 400, Enginehouse expenses—Train, appearing on pages 80, 81 and 84 of the Commission's Classification of Operating Revenues and Operating Expenses of Steam Roads, Issue of 1914, it will be found that the Commission does not provide for any adjustments between Accounts 388 and 400 by reason of the handling of different types of locomotives. Nor is there any practical reason why any adjustment should be made on account of any variation of types of locomotives on the Wheeling and Lake Erie Railway. Therefore Account No. 388 has not been overcharged as alleged by Mr. Saur.

(11) Less-than-carload freight is not overcharged in the apportionment of expenses of station employees, and of weighing and inspection bureaus.

At pages 2800 and 2801 of the transcript Mr. Saur criticized the apportionment to less-than-carload freight of expenses of station employees as follows:

"Under Item C—''Transportation Expenses'', Lines 2 [fol. 2910] and 3, ''Station Employees'', is found a total of $970,294, divided approximately 64 percent to carload and 36 percent to l. c. l. Carload traffic on W. & L. E., according to the annual reports for 1930 and 1931, constitutes over 99 per cent of the total tonnage originated on that railroad. Irrespective of the method used to divide station expenses as between carload and l. c. l. it is obvious that 36 per cent of total freight station expenses to handle less than 1 per cent of the total business is grossly out of line. On Pages 1014 and 1015 of the record of this case it is noted that almost 75 per cent of wages of station employes was found by study of larger stations to be allocated to carload traffic; yet, when the final distribution

of Account 373 is made, as described by Witness Durham, it turns out that only 64 per cent is actually apportioned to carload traffic instead of 75 per cent.

The Division of Weighing and Inspection Bureaus, Item C-4 and Item C-5, which account totals $23,400, results in $5,765, or 25 per cent being charged to l. c. l. traffic, which traffic, as mentioned before, amounts to less than 1 per cent of all of the W. & L. E. traffic."

Mr. Saur's criticism that the charge of 36 percent of total freight station expenses to the handling of less than 1 percent of the total business is grossly out of line, is made without any consideration whatever being given to the difference in the character of carload and L. C. L. traffic and of the station service required in connection therewith. In other words he ignores the fundamental difference between carload and L. C. L. traffic. The former requires relatively little attention from station employes, while the latter requires a great deal of such attention. Principally for that reason rates on L. C. L. freight are [fol. 2911] several times as high as are the rates on carload freight.

Mr. Saur's confusion with respect to the 75 percent shown by the special study as chargeable to carload freight and the 64 percent charged thereto on page 7 of Exhibit No. 146 is apparently due to his failure to understand the scope of the special study made in connection with station employes, as fully explained at pages 1013, 1014 and 1015 of the transcript. That study covered only the wages of freight agents, clerks and attendants at three of the company's largest freight stations. The study did not include the wages of warehouse employes, weighmasters, or employes transferring lading of bad order cars containing carload freight, for the reason that the wages of warehouse employes are assignable and assigned directly to L. C. L. freight, while the wages of weighmasters and employes transferring bad order cars are assignable and assigned directly to carload freight. This study showed that the wages of agents, their clerks and attendants were distributable on the basis of 25.26 percent L. C. L. freight and 74.74 percent carload freight. The proportionate charge of 25.26 percent of the total wages of agents, clerks and attendants for the years 1930 and 1931 was $201,850, and

by adding thereto the total wages of warehouse employes directly assigned, amounting to $148,497, results in a total of $350,347 chargeable to L. C. L. freight which represents 36.11 percent of the total charge of $970,294 to account 373, Station employes—Freight, for the two years 1930 and 1931.

In the cost study, Exhibit 146, the total operating expenses assigned to the cost of handling L. C. L. freight, including overhead costs, included in Column 12—Special Expenses—Page 7, are $414,184 for the years 1930 and 1931. The number of tons of L. C. L. freight handled during the two years was 178,245, at an average cost per ton, including overhead, of $2.32. This cost is shown to be conservative by a comparison with the costs shown by the [fol. 2912] Interstate Commerce Commission in its report, In the Matter of Container Service, Docket No. 21723, 173 I. C. C. 377, 401, where clerical and platform costs in cents per one hundred pounds are shown as follows: New York Central 24.15; Pennsylvania 21.25; and Lehigh Valley 13.7, which are equivalent to $4.83; $4.25; and $2.74 respectively per ton.

The $5,765.00, proportion of the expense of weighing and inspection bureaus assigned to L. C. L. traffic, is a reasonable charge, and in any event is so small that its inclusion in car load traffic would not increase the net ton cost of transporting coal to any of the six destinations.

(12) A part of the expenses of handling company material is included in the cost of transporting coal shown in Exhibit No. 146.

At page 2801 of the transcript Mr. Saur criticized the cost study upon the ground that the cost does not take into account the expense of transporting company material. Although Mr. Saur stated that he "understood Mr. Durham to say that no allowance was made for this cost in his study", he apparently overlooked the redirect testimony of Mr. Durham at pages 2561 to 2563 of the record. It is there shown that in arriving at the assembling costs and station expenses in the cost study, only revenue carloads were used, which had the effect of requiring revenue freight to absorb all of the assembling costs and station expense incident to the handling of non-revenue freight. And as he further testified at pages 2562 and 2563 of the

record, there are elements in the cost study which offset the fact that the cost of line haul and terminal service of non-revenue freight has not been specifically provided for. Thus, there is a considerable overcharge in the assembling cost due to the use of $20.30 per train hour shown opposite item D in Column 4, on pages 9 and 10 of Exhibit No. 146; [fol. 2913] first, by reason of the fact that the average tractive power of the locomotives used in assembling service was approximately 26 percent less than the average tractive power of locomotives used in freight service, and second, that the crews working in assembling service are paid relatively less overtime than crews working in all classes of road freight service. These overcharges in the assembling service amount to approximately 2.9 cents per ton of coal transported. The charges to transportation of coal for locomotive fuel were overstated because no recognition was given in the study to the relatively low consumption of fuel for moving heavier tonnage trains as shown at pages 2563 of the record. These overcharges in the study would more than offset any small undercharge resulting from the inclusion of non-revenue freight in line haul and terminal delivery service.

(13) Distribution of cost of fuel for locomotives is correctly made as between road service and yard service:

The apparent "serious discrepancy" in the distribution of fuel charges to yard locomotives (referred to by Mr. Saur at pages 2801 and 2802 of the transcript) which he bases partly upon the fact that fuel for yard locomotives amounts to but 28 percent of the total fuel charges on the Wheeling and Lake Erie Railway, and partly upon his finding that yard locomotive-miles represent 43 percent of the total road and yard locomotive-miles, will disappear in the light of the following facts.

The 28 percent which he finds charged to yard service is the percentage arrived at by dividing the total charges to Account 382—Fuel for yard locomotives, by the total charges to Accounts 382 and 394, which include both freight and passenger. Details of the calculation by which Mr. Saur found that the yard locomotive-miles represented 43 percent of the total road and yard locomotive-miles are not available. However, the facts are these: The locomotive-miles shown by annual reports to the Interstate Com-

[fol. 2914] merce Commission for the years 1930 and 1931 are as follows:

Road Service		
Freight	3,021,244	
Passenger	500,619	
Mixed (Frt. 49,108—Pass. 6,027)	55,135	
Train switching	149,661	
Total Road	3,726,659	
Yard switching	2,330,645	
Total locomotive-miles	6,057,304	
Yard switching proportion		38.5 percent (instead of 43 percent as stated by Mr. Saur.)

The difference between the yard proportion of 28 percent of the total fuel charges and the yard proportion of 38 percent of the locomotive-miles is explained by reason of the fact that the consumption of the locomotive fuel per mile depends upon the size of the locomotive and upon the tonnage which it handles. It is well known that yard locomotives are generally smaller than road locomotives and that they move much less tonnage per mile than do road locomotives, consequently they must use much less fuel per mile than do road locomotives.

There is no showing by Mr. Saur that there is any error in the distribution of fuel charges on the Wheeling and Lake Erie Railway as between road and yard locomotives. This distribution is made in a careful manner in accordance with the instructions of the Commission.

(14) The apportionment of $55,197.00 to yard expense on account of draw bridge operation is proper.

At page 2802 of the transcript Mr. Saur criticizes the apportionment to yard expense of the sum of $55,197.00 on account of draw bridge operation, for the reason that all of the Company's draw bridges are located at Cleveland and Toledo. These draw bridges are yard facilities, and it is entirely consistent to treat the expense of their operation in the same manner as the expense of operating

[fol. 2915] other yard facilities. The fact that they are confined to two of the company's most important terminals does not require a departure from the general plan of the cost study whereby expenses of yard facilities are apportioned over the system.

(15) The method of determining unit costs for car service as shown on page 8, and their application as shown on pages 9 and 10, Exhibit 146, are correct and fully charge the transportation of coal for the use of cars.

Mr. Saur in his criticisms of page 8 of Exhibit No. 146 (Tr. 2804) stated that in Docket 19610—The Chicago Switching case, the Interstate Commerce Commission approved the car-day basis for calculating car service costs. Passing for argument the question of the Commission's approval, in that case only switching rates, carloads, in a large switching district, densely populated, having many industries, and served by a large number of railroads, were involved, and the mileage factor in car service was doubtless relatively unimportant. Assuming, without admitting, that the car-day basis was proper for use in that situation, the service involved in the present case is of an entirely different character. Here, road service predominates and the mileage, or distance, use of cars becomes an important factor for consideration.

Witness Saur attempts in a calculation to arrive at a unit charge for the use of freight cars by obtaining an average cost per serviceable car-day. The result of this calculation is erroneous by reason of the fact that only cars in service on the Wheeling and Lake Erie Railway have been included and that no consideration has been given to the excess number of cars owned by the Wheeling and Lake Erie Railway Company in service on other railroads over the number of cars of other railroads in service on the Wheeling and Lake Erie Railway.

The excess number of Wheeling and Lake Erie cars on other railroads for 1930 and 1931 is determined as follows:

[fol. 2916]	1930	1931
Average number of cars owned (Line 1, page 8 Ex. 146)	11,500	11,470
Average number of cars on line daily (Line 3-a, page 8, Ex. 146)	9,844	10,191
Excess number of W&LE cars on other railroads over the number of cars of other railroads on W&LE	1,656	1,279

One of the effects of Mr. Saur's error in method is to grossly overstate the unit cost per car-day as is shown by the following calculation:

	1930	1931	Total
Number cars owned (Item 1, page 8, Ex. 146)	11,500	11,470	22,970
Average number unserviceable and stored cars (Items 3-b and 3-c, Ex. 146)	1,631	3,304	4,935
Average number W. & L. E. cars in service on W & LE and on other railroads	9,869	8,166	18,035

Multiplying the total of 18,035 cars in service by 365 days per year produces 6,582,775 serviceable car-days. This number of serviceable car-days multiplied by the 97 cents found by Mr. Saur's calculation to be the cost per serviceable car-day (called active car-day by Mr. Saur) results in a total car maintenance cost of $6,385,292, which is $1,800,448, or 39.27 percent, in excess of the actual car maintenance costs shown in Column 3, line 2-d, page 8 of Exhibit No. 146. Since the actual car maintenance cost there shown includes all of the cost of maintenance properly chargeable and charged to the cars of the Wheeling and Lake Erie Railway in service on other railroads, the cost found by Mr. Saur, as applicable to serviceable cars of the Wheeling and Lake Erie Railway must be incorrect.

Apparently the cost of 97 cents per car-day used by Mr. Saur includes a proportion of traffic and general expense already properly charged in the cost study.

Mr. Saur's further calculation which purports to show a cost of $4.35 per 100 miles for the use of cars—and by the use of which he attempts to justify the erroneous result of his calculation by which he finds an apparent cost of 97 cents [fol. 2917] per car-day—contains the same fundamental error of method. That is to say, he has taken into account only the mileage made by cars on the line of the Wheeling and Lake Erie Railway. No consideration was given to the Wheeling and Lake Erie Railway's car balance credit, which has already been referred to and explained. If it be kept in mind that it is the cost of maintaining the cars of the Wheeling and Lake Erie Railway, both those on and off its lines, that has been and must be used in the cost study as the basis for the charges for car service, the error into which Mr. Saur has fallen may be avoided.

Moreover, in a situation such as is here under consideration the use of either the car-day or car-mile basis, to the

exclusion of the other, for determining and/or applying cost of car service must result in error. The reason is that both the element of time, in which the principal items are depreciation and deterioration, and the element of service, which results in wear upon and damage to parts, must be taken into consideration.

The method of determining unit costs for car service as shown on page 8, and their application as shown on pages 9 and 10, Exhibit No. 146, fully accounts for both time and use. This fact must have been recognized by the Interstate Commerce Commission when the same basis was prescribed by it in connection with effecting final settlement between the railroads and the United States Government for the guaranty period.

(16) Adjustments of average system unit costs upon the basis of known facts produces correct results.

Mr. Saur, in criticizing the cost study stated at page 2806 of transcript:

"Under items B-2, B-5 and B-6, the charges represent in the final analysis merely the sense of justice of the person preparing this exhibit. These percentages adjusted on ac- [fol. 2918] count of constructive miles, size of locomotives, etc., can be just as well defended whether they are 105 per cent or 150 percent."

The adjustments referred to by Mr. Saur do not represent merely the "sense of justice of the person preparing this exhibit," but are based upon facts, as fully explained at pages 1022, 1023, 1024 and 1025 of the record. From this it will be seen that Mr. Saur's statement that they "can be just as well defended whether they are 105 percent or 150 percent" is incorrect, for the reason that such wide variations cannot be obtained from a factual basis.

(17) The method of apportioning expense of traffic, general and transportation for investment (credit) expenses employed in the cost study fully charges the coal traffic under consideration for traffic and general expense.

At page 2806 of the transcript Witness Saur said:

"The total direct freight operating expenses in connection with the operation of a train to Cleveland is shown on page 9, Line I, as $1862.48. Added to this is $185.32, which is obtained by applying 9.95 percent to the total direct freight

operating expenses in Column 1. The percentage named happens to be the proportion that "traffic and general transportation for investment expenses" bears to the total expenses. As far as we can see, this is the only relationship. This does not seem to be a reason for apportioning to trains handling coal less than 10 per cent of the "traffic general and transportation for investment expenses", particularly when it is remembered that 43 per cent of all traffic originated on W. & L. E. is bituminous coal. In my opinion, this bituminous coal traffic certainly justifies more than 10 per cent of the attention of the general and traffic organizations."

Again Mr. Saur has fallen into the error of considering only traffic originating on the Wheeling and Lake Erie Railway when discussing groups of general accounts, the expense [fol. 2919] included in which must apply to all traffic handled. During the years 1930 and 1931, coal traffic, excluding lake cargo, originating on the line amounted to 15.52 per cent of all traffic handled by the Wheeling and Lake Erie Railway.

Under normal conditions the amount of time of the general and traffic organizations devoted to coal traffic originating on the line of the Wheeling and Lake Erie Railway is relatively less than that devoted to any other class of traffic handled. The principal reasons for this are, (a) all coal traffic originating on the lines of The Wheeling and Lake Erie Railway Company is shipped from mines situated in a relatively small area in eastern Ohio, a large proportion of such mines not being served by any other carrier, and (b) the majority of the coal companies operating such mines have their headquarters in Cleveland where the general officers of The Wheeling and Lake Erie Railway Company are located. This situation facilitates the transaction of business. On the other hand the traffic of The Wheeling and Lake Erie Railway Company, other than originated coal, is drawn from a widespread territory covering generally the northeasterly portion of the United States where shippers and consignees are widely scattered, and where the competitive situation necessitates more intensive solicitation relative to the volume of business. Another item included in general expense is that of accounting, the work of which is relatively much less in connection with originated coal traffic than it is for any other class of freight traffic including L. C. L. Undoubt-

[fol. 2920 & 2921] edly the method employed in the cost study results in the coal traffic covered thereby being adequately charged for traffic and general expenses.

Respectfully submitted, Andrew P. Martin, Attorney for The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, and The Akron, Canton & Youngstown Railway Company. Geo. Durham, on behalf of The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company and The Akron, Canton & Youngstown Railway Company.

Cleveland, Ohio, February 27th, 1933.

Duly sworn to by George Durham, jurat omitted in printing.

[fol. 2922] VERIFIED STATEMENT OF EVIDENCE FILED ON BEHALF OF EASTERN OHIO COAL OPERATORS' ASSOCIATION, ET AL., IN LIEU OF SURREBUTTAL.

To the Interstate Commerce Commission:

The following verified statement of evidence is filed in lieu of surrebuttal, pursuant to the stipulation of counsel of February 17, 1933 (R. 3285-6), in behalf of Eastern Ohio Coal Operators' Association and individual operators in the Ohio No. 8 and Cambridge districts:

STATEMENT OF C. B. ACKERMAN

I am the C. B. Ackerman who testified in this proceeding.

I heard the testimony of J. E. Davenport, K. V. Conrad, John Hewes, Jr., J. E. Teal, and W. R. Triem, with regard to my locomotive performance testimony and exhibits. In this statement I will reply to petitioning respondents' witnesses' criticisms of my locomotive performance theory and point out errors of fact in their testimony and comment on such errors.

At p. 2905 Mr. Davenport commented on my statement at p. 1648 of the record to the effect that the tonnage rating of a locomotive takes into account all factors with which the [fol. 2923] operating department is confronted in the movement of trains, and stated that this is not the case "unless

it is coupled with the tractive effort of the engine." I agree with this qualification and the portion of my testimony referred to by Mr. Davenport made this perfectly clear. For example, after explaining the considerations which affect train ratings and referring to the rules of various railroads on this subject as published in their operating time tables, I said, at p. 1652, "The size of the trains or the tonnage ratings of the trains is of course dependent, among other things, upon the tractive power of the locomotive which hauls that tonnage, * * *." There is therefore no disagreement between me and Mr. Davenport on this point. I agree with him that the tonnage rating of a locomotive, coupled with its tractive effort, takes into account all factors with which the operating department is confronted in the movement of trains. When I said, a little later in the same portion of my testimony, at p. 1652, that the formula, which combines the train rating and the tractive effort of the locomotive used, reflects "all of the conditions encountered in actual operations", I meant the statement to be understood as applying to the movement of trains only as I had stated at the opening of this passage. I have never claimed that my formula measures all operating conditions, as will more fully appear in this statement.

The first so-called defect in my theory pointed out by Mr. Davenport is that it fails to take into consideration any transportation conditions other than the line haul; that is to say, it fails to reflect the burden of assembly service, interchange service, and delivery service at destination (R. 2907). I agree that the formula does not measure anything but line haul conditions, but I do not consider this a defect. It does not purport to measure anything but the line haul and the other conditions referred to must be measured in other ways.

Mr. Davenport then proceeded, beginning on p. 2911, to enumerate what he called the fundamental defects of my theory of locomotive performance as determined by the operating committee of the carriers for which he spoke. I shall take up the criticisms enumerated by him in the order in which they were stated and discuss each one.

[fol. 2924] (1) The final figures shown on the Ackerman exhibits are arrived at by erroneous mathematical computations (R. 2911).

This criticism is elaborated and discussed in detail beginning at p. 2915. Mr. Davenport there states that I secured my final figure by developing two averages "one purporting to show the tractive power of the locomotive and the other purporting to show the tons hauled by the locomotive." He then says that I proceed to secure my final answer "by dividing the average tractive power of locomotive by the average gross tons per train which that locomotive hauls" and he says that in thus dividing an average by an average I have arrived at a conclusion which is purely fallacious (p. 2916). This criticism is entirely unsound for the reason that the two averages which I use are both weighted by the same factor, namely, miles. That this is a complete answer to this criticism is clear from the fact that the same final result is obtained by dividing the total tonnage rating miles into the total tractive power miles, which process does not involve the averaging of averages at all. This can best be illustrated by the first block of figures on sheet 2 of exhibit 256. The average tractive power shown in column E (which is weighted by miles) divided by the average tonnage rating shown in column C (which is likewise weighted by miles) produces 14.82 pounds per gross ton. Similarly the total of column F (tractive pound miles) divided by the total of column D (tonnage rating miles) produces 14.82 pounds per gross ton. This demonstrates mathematically that I have not been guilty of making an average of averages, but have made a true average by dividing the totals of the factors. It is exactly the same process as that used in determining average traffic density per mile of road.

At p. 2917 Mr. Davenport states that the proper method of determining the average tractive power per gross ton for a given train passing over several districts is to multiply the length of each district by the number of pounds of tractive effort per gross ton for that district, add the products and divide by the distance. This would be a wholly fallacious formula in that it would have the effect of compounding averages and would produce a result which would be nothing but an average of averages, which, as Mr. Davenport pointed out on p. 2916, is purely fallacious.

[fol. 2925] (2) The Ackerman theory compares performance upon the basis that the traffic is being offered in such volume as to permit the full utilization of full tonnage ratings from all engine districts. (R. 2911.)

It is true that my fo-mula compares performance on the theory that full tonnage ratings will ordinarily be utilized and I regard this not only as a proper but a necessary assumption. This is demonstrated by the testimony of the carriers' witnesses with respect to the manner in which train ratings are determined. Mr. Davenport testified that after train ratings have been computed theoretically they are tested in actual practice on the road by building up a train to the assumed tonnage and moving it over the section of road in question. (R. 3041.) Such a test is always based on the amount of tonnage actually available for movement on the particular division. This is clear from Mr. Conrad's statement, on page 3018, that in selecting the type of locomotive to be used you would never take one with a greater capacity "than the volume of traffic you have to move." Of course this practice must be followed if inefficient and wasteful operation is to be avoided. I therefore consider the train ratings to be the proper measure of the weight hauled in applying my formula to various roads and divisions. The whole matter was disposed of by Mr. Teal's statement on page 3203 to the following effect: "In planning your operation you take into consideration the volume of traffic, the nature of traffic, and the kind of power most satisfactory for performing the service desired." This is an excellent summary of the proposition and makes it clear that the ratings are fixed with the idea that in ordinary practice they will be observed.

(3) The Ackerman theory rests upon the assumption that the movement of coal is in solid coal trains. (R. 2911.)

This criticism was elaborated by Mr. Davenport beginning on page 3047. His point, as explained there, is simply that, in order to reach the train ratings in effect on many of the divisions involved in this case it would be necessary [fol. 2926] to have a train of solid coal or other traffic with the same loading characteristics. This is true. But it is likewise true, as explained by Mr. Conrad (Rec. 3018), that if the traffic necessary to reach the rating was not available a smaller locomotive would be put in service. My reply to criticism No. 3 therefore is that my formula does not assume solid coal trains except where they actually move and where the ratings are based on that fact. In such cases it is proper to assume them. This criticism is really nothing more than

a restatement of criticism No. 2 which I have already answered.

(4) The Ackerman theory makes no allowance for the additional burden of multiple-line operation as compared with single-line operation. (R. 2912.)

It is true that my formula does not make allowance for the transfer operations involved in multiple-line hauls. Mr. Davenport testified that the Ohio territory studied by me involved 4.4 multiple-line routes per destination while my Indiana-Illinois territory involved 3.5 multiple-line routes per destination. (R. 2922.) This comparison is improper because it fails to include the element of distance and because it ignores the number of interchanges involved in a multiple-line route. A proper basis of comparison would be the number of interchanges in relation to the miles of line covered. I have examined all of the lines shown on my Ohio and Illinois-Indiana exhibits and I find that there is one interchange in Ohio for each 62 miles of road and one in Illinois-Indiana for each 68 miles. This shows a slight superiority in favor of Illinois-Indiana but not nearly so great as Mr. Davenport's figures would indicate and not sufficient to represent a substantial difference in operating conditions.

[fol. 2927] (5) The Ackerman theory does not take into consideration the relative burdens of transportation in so far as they are affected by the diffusion of coal traffic, whether such diffusion occurs by reason of several assembly points or by reason of several destination points being included in the route of movement shown by his respective charts. (R. 2912.)

I agree that the diffusion involved in assembling service and in delivery service is not measured by my formula because, as already explained, the formula is confined to the loaded line-haul movement. Mr. Conrad referred to line-haul diffusion and pointed out that, when traffic comes on to the line at an intermediate point on the train rating district, the train has to be run as far as that point without full tonnage. (R. 3010.) I agree that my formula would not reflect differences due to this situation. Nor, for that matter, would it reflect differences due to the reverse situation, where traffic leaves the line at an intermediate point on the train rating district. However, variations due to situations

of this kind could not be very great. Efficient operation requires that train rating districts be laid out with a view, as far as possible, to permitting full train loads over the entire distance. To the extent that this is impossible the situation in Illinois and Indiana would be distinctly inferior to that in Ohio, for the reason, as shown by Mr. Davenport (R. 2943 ff.), that the volume of tonnage moving on the Indiana-Illinois routes is comparatively light. Because of this fact it moves frequently in local trains which are not able to maintain their full tonnage rating on account of the necessity of dropping and picking up traffic. Furthermore in the Illinois-Indiana territory a great many routes are made up of north and south originating lines which intersect with east and west delivering lines. As an illustration, the B. & O. Railroad between Rochdale, Indiana, and Tuscola, Illinois, a distance of 90 miles, has six connections from which coal is received, averaging one connection for every 15 miles of road. On the line from Washington, Indiana, to Flora, Illinois, it has four connections and one mining point in a distance of 59 miles, averaging 11.8 miles between the points [fol. 2928] where loads can be picked up. Many similar illustrations might be recited, which are without parallel in Ohio. This produces much greater line-haul diffusion of traffic in Illinois and Indiana than in Ohio.

(6) The Ackerman theory completely ignores the importance of the time element in comparing transportation burdens. Time is a measure of work done. (R. 2912.)

My theory does not ignore the element of time, but takes it into account to the exact extent to which it affects performance. All train ratings are fixed in the light of the time necessary to get the train over the road. Mr. Conrad testified that all of the Norfolk & Western's operating time tables show two classes of ratings for the locomotives in service, one for fast merchandise freight trains and the other for full tonnage freight trains. As Mr. Conrad stated, time is reflected in the ratings to the extent that the ratings for fast freight are less than the capacity of the engine moving at a slower speed. (R. 3013.) The same witness further illustrated this point in connection with the ratings testified to by him in No. 23842, State Corporation of Virginia v. N. & W. Ry. Co., which he said were fixed at the weight the engine in service could haul over the ruling grade at a particular

speed. (R. 3031-35.) In connection with one particular rating, that between Roanoke and Shenandoah, he said that all trains operated on schedule in order to meet connections at junction points and that they carried less tonnage for this reason. (R. 3034.) It is perfectly clear from these statements by defendants' witnesses that the train ratings which I have used are all made to reflect slow freight time, and this will not vary substantially on different roads. On all of these roads engine and train crew wages are paid at the rate of 12½ miles per hour, the basic day's work being 100 miles or eight hours, and the operating divisions are laid out so as to make the actual runs conform to this schedule as closely as possible and so prevent the payment of overtime. On the other hand, if a crew finishes its run in less than eight hours it must still be paid for the full eight hours' [fol. 2929] service. Of course there are departures from this schedule from time to time due to extraordinary circumstances, but they would be as frequent on one road as on another.

(7) The Ackerman theory adopts tractive power as the unit of comparison. Tractive power as used by Mr. Ackerman is not the unit actually used nor the proper characterization of the force or energy which is actually used in hauling a train load of bituminous coal. (R. 2912.)

This criticism was elaborated by Mr. Davenport beginning at page 2924 and by Mr. Triem beginning at page 3207. The point they made was that there is a variable loss of power between the rim of the driving wheel and the drawbar of the engine, depending on the type and efficiency of the particular locomotive. This was illustrated by Mr. Davenport, who said that the New York Central type H-6 locomotive shown on my exhibit 265 has a tractive power of 54,720 pounds and a drawbar pull at starting of 51,515 pounds. (R. 2924.) Mr. Triem elaborated the point further, at page 3208, by saying that my theory assumes a constant relationship between tractive power and tonnage rating, which, as he stated, is not the fact. He referred to the tonnage ratings of various locomotives as determined from actual tests on the eastern division of the Pennsylvania Railroad between Crestline and Conway and stated that an I-1 engine required 30.9 pounds of tractive effort per ton of train rating, an M-1 engine 28.8 pounds, an L-1 engine 27.4 pounds, and an H-10 engine 27.9

pounds. He then went on to claim that my formula could be used to show variations in operating conditions where none exist, saying: "It is possible, through the substitution of one type of engine in a given territory for another type, to show a variation in the tractive effort per gross ton which according to the Ackerman theory indicates a difference in operating conditions although physically no change is made in conditions." (R. 3210.)

This shows a complete misconception of the purpose of my formula. It is intended to measure and does measure the effect, not only of the characteristics of the road, including grades, curves, length of passing sidings, etc., but also the [fol. 2930] characteristics of the locomotive in service on the road. If a locomotive is in service which requires only 27.4 pounds of tractive effort per gross ton, that is an operating advantage on that division which is directly reflected by the application of my formula. If a less efficient locomotive is in service which requires 30.9 pounds of tractive effort per gross ton, that is an operating disadvantage which is like wise directly measured by the use of my formula. The error which Mr. Triem and the operating committee have made in this and a number of other similar criticisms is in ignoring the fact that the efficiency of the locomotive in service is one of the most important things to be measured. A good illustration of this was given by Mr. Teal, who said that if you took the most efficient locomotive known at a particular time and applied the Ackerman formula and then repeated the process twenty years later with a more efficient locomotive, but without any changes in the line, the formula would give a different result. (R. 3222.) It ought to. The point is that the locomotive in service is part of the road, and the fact that the formula produces different results in the case of locomotives of different efficiency is not a defect in the formula but a demonstration of its accuracy.

(8) Under the Ackerman theory tractive power is apparently constant. The fact is to the contrary. Tractive power, as well as drawbar pull, varies as to speed and grade in a variable ratio under different locomotive designs. (R. 2912.)

I do not assume that the tractive power of a locomotive is constant at all speeds and that assumption is not necessary to my theory. The tractive power is the essential char-

acteristic of a locomotive. It is what the railroad purchases when it buys a locomotive—the initial force which the locomotive applies in handling a train over its division. It must always be sufficient to start the train at any point on the division. The fact that it is not always used to the utmost is of no consequence. It must be available if the tonnage is to be gotten over the road. This answers Mr. Davenport's further elaboration of this criticism on page 2939, where he points out that the ruling grade is usually a small part of the total run of the engine.

[fol. 2931] It is true that the drawbar pull is a variable factor. However, drawbar pull is of no importance in this connection as its use as a factor of the formula would have the effect of ignoring variataions in the loss of energy between the point of adhesion of the driving wheels to the rail and the drawbar, i. e., locomotive efficiency. Furthermore, most of the variation in drawbar pull is due not to variations in locomotive efficiency but to differences in the load behind the locomotive or the speed at which it is moving. In spite of this, however, the full tractive power must be available at all times. If this were not so a smaller locomotive would be put in service.

(9) The Ackerman theory of tractive power does not reflect differences in the amount of service required by engine or train crews. Such differences in service bear no direct relation to tonnage ratings or tractive effort. (R. 2912.)

This criticism was not elaborated and its meaning is not clear. The wages of engine and train employees are uniform throughout this whole territory and the railroads endeavor to locate their division points at such places as will result in the most economical operation in view of the wage scale under which the employees are working.

(10) The Ackerman theory of tractive power does not reflect the burden of the maintenance of way nor the burden of maintenance of equipment, particularly as applied to the maintenance of the rolling stock in which the bituminous coal is moved. Such burdens are not directly related to either tonnage ratings or tractive effort. (R. 2913.)

It is true that my formula does not measure the cost of maintenance of way or maintenance of equipment. As explained by Mr. Teal, one-third of maintenance of way expenses depends upon the use of the right of way and the

remainder depends on weather and the terrain through which the road runs. (R. 3199.) On the whole the nature of the terrain or the topography of the country is not mate- [fol. 2932] rially different in Ohio from that in Illinois and Indiana. In the southeastern part of Ohio the territory is rolling and broken and corresponds to the territory in the Linton-Sullivan and Brazil-Clinton groups of Indiana and to a lesser degree to the territory in southern Illinois, which is in the foothills of the Ozark mountains. North of this broken terrain both in southeastern Ohio and in southern Indiana and Illinois the territory flattens out into a plain which extends north to Lake Erie on the one hand and to Lake Michigan on the other. As a result central and northern Illinois is much the same as central and northern Ohio.

In the south the railroads generally traverse a mountainous district, with many curves where the rights of way follow the river beds. The construction of the roads involved a great deal of excavation work, as they are generally successions of cuts, fills and curves. No such situation as this exists in Ohio or Illinois and Indiana. This condition in the south would tend to increase the portion of maintenance of way expense not directly due to use.

Referring to car maintenance, there would be no important variation as between different divisions and railroads in the territories here under consideration except where very long trains are operated. Trains of about 80 cars or more, other things being equal, entail heavier car maintenance than shorter trains on account of the great power necessary to be exerted in starting and moving such trains. Variations in the length of trains below 80 cars are of no importance in this connection, but above that limit car maintenance increases materially.

My exhibits 266, 267, 326, 327, 328, 329, and 330 show that the average train in the various territories here involved is well under 80 cars except from the southern high volatile and southern low volatile districts. The only important variation in car maintenance would therefore be against the south.

Referring to locomotive maintenance, there would be no important variation on roads where consolidation and Mikado types of locomotive are in use. However, this item increases disproportionately in the case of larger locomotives such as the Santa Fe, Texas and Mallet types.

My exhibit 325 shows that while there are a few of these larger types of locomotives in service in Ohio and in In-
[fol. 2933] diana and Illinois, notably on the Baltimore & Ohio, Wheeling & Lake Erie, and Illinois Central, there are a great many more in service on the Chesapeake & Ohio, Norfolk & Western, and Virginian. This would make the burden of locomotive maintenance somewhat greater in the south than in Ohio and in Indiana and Illinois.

(11) Under the Ackerman theory gross tons in train are not directly related to energy expended in moving a given number of gross tons. (R. 2913.)

This criticism refers to the use of adjustment factors which was fully explained by me at page 1655 of the record. The criticism is apparently to the effect that in the application of the formula it is improper to use the gross adjusted train tonnage and that the proper figure to use is the actual tonnage, which is always less. I agree with this and have uniformly applied my formula in that manner. For illustration, in exhibit 256, to which Mr. Davenport refers in this connection on page 2926, I show on sheet 1, note 5, that the schedule train rating from Sandyville to Cleveland is 2700 tons with an adjustment factor of 15 tons per car. The figure which I use is not the gross rating of 2700 tons but the actual weight of 2269 tons which a train of coal loaded to the full rating will produce. This method was followed throughout.

(12) The Ackerman theory of tractive power only partially reflects the size of locomotives. (R. 2913.)

This criticism was not elaborated and the meaning of it is not clear. My formula directly reflects the power and efficiency of the locomotive in service. The size of that locomotive is discretionary with the operating department.

(13) The Ackerman theory does not reflect density of traffic. (R. 2913.)

If this criticism means that in making a territorial average I do not weigh the different sections of line in proportion to the density of traffic thereon, I agree that that is
[fol. 2934] the fact. I would regard it as improper to weight the averages in that manner for several reasons. In the first place the density of different sections of line or routes may fluctuate radically from year to year so that the results produced by the formula at different times,

if the averages were weighted by density, would vary without there having been any modification in the physical operating conditions. In the second place, the amount of traffic on a particular line or route is always more or less the result of the rate adjustment which is under examination and it would be materially modified if the rates were changed. As the purpose of the formula is to determine whether or not rates should be changed it must be so applied that its result will not be affected by the amount of traffic moving.

I would like to point out, however, that in another sense tonnage ratings do reflect traffic density inasmuch as the type of power in service, as already explained, is selected in view of the amount of traffic actually offered.

(14) The Ackerman theory does not reflect the burden imposed upon the carriers to house and prepare locomotives for their operations; in fact, it does not take into consideration the amount of engine service necessary to move a given class or volume of traffic. (R. 2913.)

This criticism was explained by Mr. Teal at page 3204 to refer to the location and equipment of round houses and the number of locomotives in service at a particular point. It is true that my formula does not directly measure engine service performed before and after the line haul, but it must be assumed that round houses are located, equipped and managed efficiently in all instances.

(15) The Ackerman theory does not reflect the burden of transportation involved in depreciation and retirement of equipment. (R. 2913.)

My formula is not intended to measure this item. In this connection I should explain that the formula is not a cost study or a substitute for a cost study. It is simply [fol. 2935] a means of measuring the factors with which the operating department is concerned in the movement of trains, which are the most important transportation conditions bearing upon rate levels.

(16) The Ackerman theory of tractive power does not reflect the efficiency of locomotive operation; that is, the amount of engine service necessary to most economically move a given class or volume of traffic between any given destinations. In other words, it does not reflect the efficiency of individual train operation. (R. 2913.)

This criticism is elaborated briefly at page 2929, from which it appears that it is nothing but a restatement of No. (2), possibility of using full tonnage ratings, No. (3), alleged assumption that movement is in solid coal trains, No. (5), diffusion of traffic, and No. (13) traffic density, all of which I have already fully answered.

(17) The Ackerman theory of tractive power does not reflect the relative burdens of transportation on different railroads in proportion to the amounts expended in improvements, such as installation of large tanks, automatic stokers, coal pushers, etc. (R. 2914.)

This criticism relates to improved locomotive equipment of various kinds. The effect of such improvements is to increase the efficiency of the engine and permit it to haul a heavier train tonnage with a given tractive power than would otherwise be possible. My formula directly measures this fact, as already pointed out in connection with criticism No. 7. As I stated in that connection, I regard the locomotive in service as a part of the road and one of the great advantages of the formula is that it measures the effect of the locomotive's performance as well as the effect of the road over which it operates. If the locomotive is efficient that fact is reflected in the result produced by the formula. If it is inefficient that fact is also reflected. The cost of the locomotive or of improved equipment attached to it is not directly measured. As already pointed out my formula is not a cost study or a substitute for a cost study.

[fol. 2936] (18) The Ackerman theory of tractive power does not reflect the relative burdens of transportation on different lines of railroad or on different parts of the same railroad involved in the returning of empty cars to coal mines. It has already been pointed out that the relative differences in the burden of transportation involved in assembling cars from the mines is not reflected by Ackerman's theory. The same is true as to the return of empty cars to the mines, not only from the assembly yards, but also in the return of empty equipment from the destination points to the assembly yards. (R. 2914.)

My formula does not measure and is not intended to measure the relative amount of service performed on dif-

ferent roads or in different territories in returning empty cars. That must be dealt with in other ways.

(19) The Ackerman theory of tractive power does not, in any sense, reflect competitive conditions, in so far as they may require changes in amounts of tonnage hauled while tonnage ratings may remain the same. (R. 2914.)

This criticism is really the same as No. 2 involving the possibility of reaching full ratings and what I said in connection with that is applicable here. It is true that every railroad sometimes has to start trains out of a terminal light on account of competitive traffic necessities, but if that became habitual the locomotive in service and the train rating would be adjusted to permit the necessary time to be made. (Teal, 3203) I therefore consider that the formula does reflect this element so far as it exists in more than an incidental manner.

[fol. 2937] (20) The Ackerman theory does not reflect relative property investments made by different carriers. (R. 2914.)

It is true that my formula does not directly reflect property investment. However, what I have already said with regard to maintenance of way will give a general indication of relative property investment in the different territories here under consideration. Judging by the nature of the terrain involved there can be no important difference in the cost of similar construction per mile as between Ohio on the one hand and Illinois and Indiana on the other, whereas the investment in the South, due to the character of the country, is undoubtedly somewhat higher.

(21) The Ackerman theory does not reflect the burden of weather conditions as imposed upon different carriers operating from different fields. (R. 2915.)

As explained by Mr. Teal, the only important weather condition is temperature, and that does not affect railroad operation until it gets down to around 35 degrees. (Rec., 3204-5.) For the purpose of determining whether the temperature in the territories under consideration varies to an extent that would materially affect train operation, I secured from the United States Weather Bureau the monthly mean low temperatures for January, February, March, April, May, October, November, and December, 1932, at Cadiz, Ohio, Springfield, Ill., and Charleston, W. Va. These

are the months in which the temperature at these three points fell as low as 35 degrees. The average of the monthly mean low temperatures for the months referred to were as follows: Cadiz 34 degrees, Springfield 35.4 degrees, Charleston 37.3 degrees. Time table No. 36 of the Scioto division of the Norfolk & Western which provides graduated train ratings depending upon temperatures shows that the same rating is applicable between 40 degrees and 32 degrees. This makes it clear that such variation in temperature as exists between Ohio, Indiana-Illinois and West Virginia is not sufficient to affect train operation to any greater extent in one territory than in the others. [fols. 2938 & 2939] This concludes my discussion of the enumerated criticisms of my formula. I desire now to correct one statement of Mr. Triem's with respect to methods of operation which I believe to be in error. He testified at pages 3212-13 that from Yellow Creek to Summit the Pennsylvania Railroad operates a single-engine train with a helper, containing 3500 gross tons. My exhibit 257 shows a train of 7218 gross tons from Mingo Junction to Yellow Creek with one type of I-1 engine, a train of 6308 gross tons from Yellow Creek to Shale (Summit) with three type I-1 engines, and the same train beyond Shale with one type I-1 engine. My exhibit is based on information secured on the ground in my field investigation on October 5, 1932. On information and belief, the single type I-1 engine which runs from Mingo Junction to Yellow Creek is supplemented by two additional type I-1 engines which are furnished at Yellow Creek by the eastern division, which joins this line at that point. These three I-1 engines operate as far as Shale (Summit), from which point two of them return to Yellow Creek and thence to the eastern division.

Duly sworn to by C. B. Ackerman. Jurat omitted in printing.

[fol. 2940] VERIFIED STATEMENT OF EVIDENCE FILED ON BEHALF OF PETITIONING CARRIERS IN REPLY TO MEMORANDUM FILED ON MARCH 1ST, 1933, BY THE WHEELING AND LAKE ERIE RAILWAY COMPANY, ET AL.

To the Honorable, the Interstate Commerce Commission:

The following verified statement of evidence filed pursuant to stipulation of counsel on February 17th, 1933 (Rec.

pp. 3285-6) in reply to statement of evidence in behalf of The Wheeling and Lake Erie Railway Company, et al., filed March 1st, 1933: Item numbers correspond to those in the statement of The Wheeling and Lake Erie Railway Company, et al.

Statement of W. R. Triem

1. Average number of gross tons per through train.

My criticism is not theoretical and the question is not one of terminology. The actual service as described by Mr. Durham at record page 975 and again at record page 2073 indicates that there is a puller service and not a helper serv-[fol. 2941] ice between Pine Valley and Jewett; that the reason the puller service is used is because it is "more practical" and because "it is more convenient."

Irrespective of the hypothetical suggestion to the effect that the same result could be accomplished by using helper service as puller service, the fact remains that The Wheeling and Lake Erie Railway actually operates typical and independent puller service rather than helper service.

Mr. Durham's answer is in error in saying that the full cost of this puller service has been included in the cost study. He has not used the puller train miles to establish the number of tons shown by him as his average train load. He does include the puller mileage in the haul from Pine Valley to all six destinations shown in the study but this does not reflect the full cost. The difference between the costs of puller service and helper service is reflected by the fact that in the puller service it is necessary to have a full and separate train crew. Moreover, the puller train is operated independently, requiring special dispatching and supervision. The cost of neither of these factors appears in the cost of helper service.

Moreover, all of the cost is not reflected in the helper service because the puller train mileage is only 76 percent of the through train mileage for the section from Pine Valley to Jewett.

It may be further observed that the puller service is probably operated in order to obviate the necessity for the through train, if helper service were used, stopping to do assembly work and it is undoubtedly true that the puller service is preferred in order to supplement and facilitate the assembly service.

[fol. 2942] Speaking for the operating committee, it is their view that Mr. Durham's statement in the last paragraph on page 2 of his answer, with respect to difference between "gross ton miles per train mile" and "gross tons per train" is merely a play upon words. There is but one generally accepted and recognized method of arriving at the average train load for statistical or comparative purposes and that is by dividing the gross ton miles by the total number of train miles. This, Mr. Durham has failed to do and it constitutes a fundamental defect in his cost study inasmuch as his method inflates the average train load and tends thereby to substantially reduce the assumed unit costs developed in his Exhibit No. 146.

2. Mr. Durham's calculations of number of service units required for return movement of empty cars is admittedly hypothetical and rests upon an entirely unsound basis.

Mr. Durham's reply to my criticism of the calculations employed by him in line "L" of pages 1 to 6 of Exhibit No. 146 is entirely beside the point and fails to answer the substance of my criticism.

I did not misunderstand his calculations and I did not make my criticism upon the basis of the "mythical 100 car train" being actually operated. My criticism was of the assumptions made by Mr. Durham. He has ascertained the service units required to haul the loaded cars, thereby arriving at the lowest possible cost for movement of coal on his line in solid train loads. Notwithstanding the testimony showing that his traffic was unbalanced to the extent of at least 25 percent, he has applied the unit cost of the [fol. 2943] loaded service units to the empty service units involved in the movement of the empty cars in the reverse direction, which method, beyond question, fails to reflect the full cost of the empty return movement and balancing of power and crews. Whey should Mr. Durham use the hypothetical 100 car train of empties when he could have applied precisely the same cost methods to the actual movement of his empty cars in the return direction as he applied to the movement of his loaded cars to the respective destinations used?

It is admitted by Mr. Durham that "as a practical matter these cars are returned in regularly scheduled trains along with such other empties and/or loaded cars as there may be in such train."

Replying to Mr. Durham's statement as to the relatively simple operations of The Wheeling and Lake Erie Railway in connection with returning empty coal cars to the Ohio No. 8 district, it should be observed that the issues in this proceeding involve the rate adjustment of other roads than the Wheeling and Lake Erie operating in the same general territory. The difficulties referred to by me in connection with the returning of empty cars to the mining districts at record pages 2785, 2786 and 2787 are not hypothetical difficulties, but as I stated, are ones which have been and are currently being actually encountered in the operations on the Pennsylvania Railroad under my supervision.

[fol. 2944] 3. Comparison of operating ratios.

Mr. Durham comments upon Mr. Saur's conclusion based upon operating ratios for 1929 to 1931, inclusive, that "The Wheeling and Lake Erie's operations were not on a very profitable basis" by making a comparison of operating ratios on the Wheeling with similar ratios on the Pennsylvania, New York Central and Baltimore and Ohio.

Monroe's Exhibit No. 88, in evidence in this proceeding, indicates that the rate of return earned by The Wheeling and Lake Erie for 1931 was only 1.22 percent. This may be a "profitable" operation from Mr. Durham's standpoint, but it would not be so considered by me. The regrettable fact that the operating ratios of the Pennsylvania, New York Central and Baltimore and Ohio were relatively less favorable for the years 1929, 1930 and 1931 than The Wheeling and Lake Erie merely indicates that all of the railroads involved in this proceeding are not operating on a profitable basis and cannot stand further reductions in rates.

4. Average system costs per net ton mile of all freight transported on the Wheeling and Lake Erie cannot possibly represent actual unit costs applied to coal.

As recomputed by Mr. Durham, the correct cost per net ton mile of handling coal from Ohio No. 8 district to Canton, Massillon and Akron for distances of approximately 80 to 100 miles, is to Canton and Massillon, in excess of the average system expense per net ton mile, and to Akron [fol. 2945] slightly under the average system expense per net ton mile. The hauls to Canton, Massillon and Akron

closely approximate the average miles of haul of revenue freight on The Wheeling and Lake Erie for the years 1928 to 1931, inclusive, as shown by its annual reports to the Commission. This indicates that as computed by Mr. Durham, himself, the correct cost per net ton mile of handling coal for distances approximating the average system haul is certainly not less than the average system cost of hauling all freight. For the longer hauls to Cleveland, Lorain and Huron the corrected cost per net ton mile, as refigured by Mr. Durham, is somewhat lower than the system cost per net ton mile.

As a result of this further analysis, it may be asserted with confidence that the cost as shown in Mr. Durham's Exhibit No. 146 does not reflect all of the costs involved in handling the coal traffic under discussion. This is apparent when the difference in his corrected cost per net ton mile figures for the longer hauls is compared with his corrected costs per net ton mile for the shorter hauls which, as above stated, approximate the average system hauls for all commodities. In other words, the corrected cost figures shown by Mr. Durham in the table at the top of page 10 of his reply convincingly support Mr. Saur's criticism of the cost study which is to the effect that the statistical analysis offered as Exhibit No. 146 cannot reflect all of the costs involved in handling the coal traffic under discussion.

[fol. 2946] 5. Average system costs per gross ton mile as applied to expense of maintaining way and structures do not adequately charge coal traffic for use.

In answer to Mr. Saur's criticism of the use of system averages as applied to specific operations, Mr. Durham suggests certain reasons why the system averages fairly reflect proper charges to coal traffic for the use of way and structures. He refers to:

(a) "Climatic conditions",

(b) "Variation in the terrain",

(c) "Full maintenance during this period".

(a) In territory where The Wheeling and Lake Erie operates there are climatic variations from 20 degrees below zero to 100 degrees above. These variations occur at times

with startling frequency, carrying with them, particularly in the case of rain, snow, sleet and windstorms, peculiar maintenance of way difficulties which must affect The Wheeling and Lake Erie to the same or relatively the same extent to which other railroads operating in the same territory are affected. The Pennsylvania Railroad operates throughout the entire territory served by The Wheeling and Lake Erie Railway and the conditions above described are true as applied to that railroad.

(b) That there is an extremely wide "variation in the terrain" is indicated by the variation in tonnage ratings in effect on The Wheeling and Lake Erie, to the extent that they reflect grades. There would certainly seem to be violent differences in terrain where the tonnage ratings vary [fol. 2947] from 1975 tons to 8745 tons for the same class of engine, especially where the engine districts or rating districts are in close proximity to each other. For example, The Wheeling and Lake Erie time table No. 14, effective September 14, 1931, furnished to petitioning carriers by Mr. Durham, shows from Neff to St. Clairsville a rating of 1975 tons; from St. Clairsville to Maynard 8745 tons; from Maynard to Harrisville 2290 tons: and from Harrisville to Adena 8745 tons. Those wide variations in tonnage ratings occur within a distance of twenty-one miles from neff to Adena. Oother examples of similar variations in tonnage ratings are from Pine Valley to Rexford 3500 tons; from Rexford to Brewster 7030 tons; from Brewster to Canton Yard 3810 tons.

Compared with the rugged terrain in southeastern Ohio, suggested by the tonnage ratings above described, the terrain of northwestern Ohio is quite uniform, i.e., without sudden and frequent changes in topography as illustrated by the fact that in a total distance of 130 miles between Brewster and Ironville the tonnage rating on The Wheeling and Lake Erie Railway changes but once and that from 6765 tons to 6445 tons.

(c) Irrespective of Mr. Durham's assertion that the Wheeling property was "fully maintained during 1930 and 1931", it does appear from the annual report of that company for the year 1931 that its total expenditures for main-

tenance of way and structures for the years 1928 to 1931, inclusive, were as follows.

1928	2,539,197
1929	2,533,713
1930	1,875,037
1931	1,378,756

[fol. 2948] from which it will be observed that in 1931 the Wheeling expended only a little over 50 percent as much for maintenance of way and structures as it did in 1928.

Mr. Durham cites as a fundamental fact that there is a certain constant expense for maintenance of way and structures necessary in order to keep used railroad property in condition for service that does not vary with the quantity of use and cost. However, it is noteworthy that Mr. Durham's cost study does not employ or make use in any way of the "certain constant expense" figures to which he refers, but instead, relies entirely upon units of cost based upon operation of the entire system.

As explained by Mr. Durham in connection with Mr. Saur's criticism that the division of track maintenance was made on a gross ton mile basis as compared with coal issues prescribed by the Interstate Commerce Commission to divide cost of track maintenance between passenger and freight; it was stated by Mr. Durham that "such a basis is impossible of application". Further, it was declared "that the fuel issues, the cost of which is chargeable to road freight service, are not and cannot be further segregated by commodities transported in freight trains".

The service units (gross ton mile) selected by Mr. Durham for measuring the quantity and cost of use of right of way and structures is therefore proven to have been selected by reasons of expediency and not because such unit was necessarily the best. The force of this criticism lies in the fact that this statistical analysis known as Exhibit No. 146 is not a computation of figures resulting from a cost study, but merely the use of such statistics as were available.

[fol. 2949] Items 6 to 14, inclusive.

A study of the explanations made by Mr. Durham under these various items develops no important new factors that were not fully considered by Mr. Saur and the accounting

committee working under my direction. The specific or general faults found in Exhibit No. 146 as described by Mr. Saur in his direct testimony have been found after consideration of Mr. Durham's statements to be valid and indicate the total absence of any actual cost data.

15. To determine unit cost for car service by using car days and car miles on an arbitrary proportion basis is necessarily inaccurate.

The controversy between Mr. Durham and Mr. Saur as to the proper method of determining unit costs for car service is, I believe in part due to a misunderstanding and the reply to Mr. Saur's testimony is to some extent in error by reason thereof.

Mr. Saur relies upon the Chicago Switching Case, Docket 19610, as support for the method suggested by him for determining unit cost for car service. Mr. Durham replies upon the assumption, but without admitting the fact, that the car day basis was proper for use in the Chicago Switching Case, and says that "the service involved in the present case is of an entirely different character". I cannot agree with this statement of Mr. Durham. The service involved in the Chicago Switching Case was of substantially the same character and differed only to the extent that the [fol. 2950] mileage in this case is somewhat greater. The difference in mileage involved in the Chicago Switching Case and this case is not sufficient, in my judgment, to make the method used in the Chicago Switching Case inapplicable.

Mr. Durham says that Mr. Saur's calculation is erroneous "by reason of the fact that only cars in service on The Wheeling and Lake Erie have been included", and that no consideration has been given to excess number of cars owned by The Wheeling and Lake Erie Railway Company in service on other railroads. I can see no possible connection or relevancy that should attach to the excess number of cars owned by The Wheeling and Lake Erie in service on other railroads or in storage on its own line in an effort to determine the cost of car service involved in the handling of coal on The Wheeling and Lake Erie. Mr. Saur's method included not only cars of The Wheeling and Lake Erie in service, but also cars of other railroads in service on lines of the Wheeling and Lake Erie. That is,

his calculation included all cars on the line, which is the customary basis for figuring cost of car service.

The misapprehension of Mr. Saur's testimony to which I referred above is due to Mr. Durham's apparent lack of understanding as to how the figure of 97 cents used by Mr. Saur was arrived at by him.

As fully outlined by Mr. Saur (Rec. p. 2804) he calculated that the proportion of all operating expenses properly chargeable to car expense for the years 1930 and 1931 was $4,948,004 which compares with $4,584,844 used by Mr. Durham in Exhibit No. 146. He also determined from records [fol. 2951] submitted by The Wheeling and Lake Erie Railway to American Railway Association that the total number of serviceable (including stored cars) car days for the years 1930 and 1931 was 7,023,982 car days. Also, that the number of car days, excluding serviceable cars stored on The Wheeling and Lake Erie Railway was 5,099,050 serviceable car days. Dividing $4,948,004 by 7,023,982 produces a quotient of 70 cents, and by 5,099,050, produces a quotient of 97 cents.

It is also evident that Mr. Durham has not understood how Mr. Saur arrived at the figure of $4.35 per 100 car miles. It must be pointed out that there was no relationship between the methods used by Mr. Saur to determine the two cost figures used by him, namely, 97 cents per active car day and $4.35 per 100 car miles. As explained above, the 97 cents was calculated from data originally furnished by The Wheeling and Lake Erie Railway. The figure of $4.35 was obtained by a simple calculation involving the total car miles of The Wheeling and Lake Erie Railway given in its annual report and the total car expenses shown on page 8 of Exhibit No. 146.

16. Adjustment of average system unit costs as made by Mr. Durham does not fairly reflect the costs of handling coal.

I repeat what Mr. Saur formerly said at page 2806 of the record: "The adjustments of average system unit costs made by Mr. Durham are not sufficient to differentiate the costs of handling coal from the average system costs". [fol. 2952] This can be supported by the fact that the adjusted excess constructive miles to Cleveland is shown by him as 110 percent, while the fact is that from Pine Valley

to Cleveland, a distance of 138 miles comprising two operating districts, a minimum of 200 miles must be paid for. This amounts to a constructive mileage of 62.8 miles, or 45.4 percent, instead of the 10 percent used by Mr. Durham.

Item No. 17.

After carefully considering the reasons advanced by Mr. Durham for apportioning 9.97 percent of traffic, general and transportation for investment (credit) expenses to direct freight operating expenses, no reason is found for this exact proportion other than the relationship of these accounts to total expenses. If it is true that the "time of the general and traffic organizations devoted to coal traffic originating on the line of The Wheeling and Lake Erie" is as explained by Mr. Durham, there has been no new evidence produced to show that it amounts to 9.97 percent, neither more nor less. It can therefore be concluded that the division of this large sum of money was made without any study being undertaken to determine the proper percentage to be used.

[fols. 2953 & 2954] *Duly sworn to by W. R. Triem and E. F. Saur. Jurats omitted in printing.*

[fol. 2955] VERIFIED STATEMENT OF EVIDENCE FILED ON BEHALF OF PETITIONING CARRIERS IN REPLY TO MEMORANDUM FILED ON MARCH 1, 1933, BY EASTERN OHIO COAL PRODUCERS' ASSOCIATION, ET AL.

To the Honorable, The Interstate Commerce Commission:

The following verified statement of evidence, filed pursuant to stipulation of counsel on February 17th, 1933 (Rec. pp. 3285-6) in reply to statement of evidence in behalf of Eastern Ohio Coal Producers' Association, et al., filed March 1st, 1933:

Statement of J. E. Davenport

I have examined the verified statement of evidence filed herein on March 1st, 1933, on behalf of the Eastern Ohio Coal Producers' Association and individual producers in

the Ohio No. 8 and Cambridge districts, and in reply I first desire to say that Mr. Ackerman's statement beginning on page 1 and page 2 with reference to my testimony at page 2905 of the record can only be explained as a considered and deliberate mis-statement of my testimony and could have been designed only for the purpose of misleading the Commission. I never agreed with Mr. Ackerman's [fol. 2956] statement of the value of his formula in whole or in part and my testimony at pages 2905 and 2906 makes this perfectly clear. In quoting me to the effect that the tonnage rating of a locomotive takes into account all factors with which the operating department is confronted in the movement of trains, a deliberate mis-statement is made and a part of the sentence taken from my testimony is omitted.

I categorically stated that the Ackerman formula, i.e., the combination of train rating and tractive effort of locomotives used, did not, in my experience as a practical operating man, reflect "all of the conditions encountered in actual operations" and my subsequent testimony made it clear that I did not consider that this formula reflected all of the factors encountered in the movement of trains. My testimony to this effect was corroborated by the positive and categorical answers to the same effect of witnesses Conrad (Rec. p. 2994); Hewes (Rec. pp. 3161-2); Teal (Rec. pp. 3182-3); and Triem (Rec. pp. 3217-8).

Beginning at page 3, Mr. Ackerman sets forth seriatim the twenty-one points or criticisms of the Ackerman formula which were included in my testimony. In substance, he admits that my criticisms as set forth in points 2, 3, 4, 5, 8, 10, 13, 14, 15, 16, 18, 20 and 21 are well taken. He offers however, in further explanation of some of them various matters of opinion as to all of which I disagree and as to none of which do I consider an answer necessary. The admissions of the validity of the criticisms as made are sufficient.

The criticisms of the Ackerman theory contained in my points Nos. 9 and 12 are in my opinion sufficiently clear, [fol. 2957] although Mr. Ackerman states that he does not understand their purport. They need no elaboration from me on that account.

As to the criticism of Mr. Ackerman's mathematics contained in my point No. 1, I stand on my statement that

the final figures shown on the Ackerman exhibits are arrived at by erroneous mathematical computations. It would be unnecessary to repeat my testimony or to go through the detailed criticism that I previously made of Mr. Ackerman's method. There was the same controversy with respect to the correctness of Mr. Ackerman's mathematical computations in the proceeding known as Central Pennsylvania Coal Producers' Association, et al., vs. The Baltimore and Ohio Railroad Company, et al., Docket 23430, wherein both of us appeared as witnesses.

On page 3 of Mr. Ackerman's reply statement, under point No. 1, he divides tractive pound miles, Column "F", by tonnage rating miles, Column "D", and in so doing he continues to follow his fallacious method by dividing an average by an average, because the total of Columns "D" and "F" are products of two averages multiplied by the same constant.

Mr. Ackerman's reply to the criticism contained in my point No. 6 is a persistent misconception of my testimony and that of Mr. Conrad. The actual and practical fact is as testified by me that in making maximum train ratings the time element is not taken into consideration. The fact that there are two classes of ratings for locomotives in service—one for fast merchandise freight trains, and the other for maximum tonnage freight trains—does not prove the contrary. Mr. Ackerman says that the train ratings which he has used were "all made to reflect slow freight time". [fol. 2958] This is directly contrary to my testimony and that of other corroborating operating witnesses to the effect that the only extent to which time is taken into consideration in the making of maximum tonnage ratings is the minimum economical speed at which a given engine will haul tonnage over the ruling or controlling grade between engine terminals.

Mr. Ackerman says that my criticism as shown under point No. 7 indicates a complete misconception of the purpose of his formula. My answer is that Mr. Ackerman's attempted reply to this criticism evades the question and erroneously states the point made by me. My direct testimony at page 2924 clearly explains and amplifies my criticism as shown in point No. 7.

Mr. Ackerman charges Mr. Triem and myself and other members of the operating committee with having erred in

this criticism and in others by "ignoring the fact that the efficiency of the locomotive in service is one of the most important things to be measured". This again begs the question and has nothing to do with the particular criticism to which Mr. Ackerman attempts at page 8 to reply. Efficiency of locomotives in service, of course, varies, and neither I nor the other members of the operating committee have overlooked this. It might be well to recall that in dealing with practical locomotive efficiency the item of importance is not the tractive power of the locomotive, but the drawbar pull and that was the point of the criticism that I made.

What I have said with respect to Mr. Ackerman's answer to my criticism as shown in point No. 7 applies with equal [fol. 2959] force to his answer to my criticism as shown under point No. 17.

Referring to my criticism of the Ackerman theory under point No. 11, Mr. Ackerman's reply shows a complete misunderstanding of my criticism which was entirely directed to the fact that the energy expended in moving a given number of gross tons is directly related to the adjusted tonnage of the particular train rather than to the actual tons hauled. No comment whatever was made in this connection with his method of applying these figures to his formula.

Referring to my criticism of the Ackerman theory as contained in point No. 19, Mr. Ackerman's reply is highly theoretical and purely a matter of opinion. Practical competitive necessities requiring the running of trains light occur daily and tonnage ratings cannot be and are not changed to meet or reflect these competitive conditions.

Referring to my criticism of the Ackerman theory as shown in point No. 21 with respect to the burden of weather conditions, Mr. Ackerman's reply is to the effect that the temperature variations in the territories involved in this case are not sufficiently wide to require extensive changes in engine ratings. In support of this position he cites the monthly mean low temperatures for certain months in 1932 at points in Ohio, Illinois and West Virginia. In answer to this, it is only necessary to say that figures of such average temperatures mean nothing. The variations in Ohio territory in fact range from 20 degrees below zero to 100 degrees above at various seasons of the year. There are frequently [fol. 2960] sudden severe changes in temperature and there

are frequent occasions when it is, as a practical matter, necessary to change engine ratings on account of changes in temperature. Within my experience it has been necessary to change the rating of a particular engine as frequently as three times within a twenty-four hour period. Furthermore, in addition to low temperatures, train ratings are severely affected by snowstorms, wind and sleet and these changes would, of course, not be reflected by Mr. Ackerman's formula.

My final comment on Mr. Ackerman's reply deals with his comment on page 17 upon Mr. Triem's testimony with respect to the operation from Yellow Creek to Summit. The information which Mr. Ackerman claims to have secured in his field investigation on October 5th, 1932, is incorrect and the operation as conducted is correctly described by Mr. Triem at pages 3212-3213 of the record.

[fol. 2961] *Duly sworn to by J. E. Davenport and W. R. Triem. Jurats omitted in printing.*

[fol. 2962] IN UNITED STATES DISTRICT COURT

In Equity No. 1039

In Equity No. 1040

[Titles omitted]

STIPULATION RE STATEMENT OF EVIDENCE

It is hereby stipulated by the parties, including the interveners, acting by their respective counsel, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

1. The within and foregoing statement of evidence is a true and correct statement in narrative form of all the oral testimony introduced before the Interstate Commerce Commission in the proceedings styled Docket No. 25566, Intrastate Rates on Bituminous Coal within the State of Ohio; Investigation and Suspension Docket No. 3801, Coal from [fol. 2963] Pennsylvania to Northern Ohio; Investigation and Suspension Docket No. 3833, Coal from Pennsylvania

to Northern Ohio (2); Docket No. 25590, Western Pennsylvania Coal Traffic Bureau, et al. v. Akron, Canton & Youngstown Railway Company et al.; Docket No. 25656, H. W. Showalter, Receiver, Continental Coal Company, et al. v. Akron, Canton & Youngstown Railway Company, et al.; Docket No. 25657, Property Owners' Committee, et al. v. Akron, Canton & Youngstown Railway Company, et al.; and Docket No. 25670, Robert C. Hill, Frank R. Lyon and Howell Fisher, Domiciliary Receivers of the Consolidation Coal Company, et al. v. Akron, Canton & Youngstown Railway Company, et al., and of four (4) verified statements of evidence filed subsequently to the hearings in lieu of oral testimony, as the same is contained in the official typewritten transcript thereof on file with the Interstate Commerce Commission, a copy of which, duly certified by said Commission, was offered in evidence by the petitioners in the District Court in the above-entitled cases as part of Exhibit No. 9; and said oral testimony and said four (4) verified statements, together with the documentary exhibits referred to therein, which were offered and received in evidence before the Interstate Commerce Commission in the aforesaid proceedings, copies of which, duly certified by said Commission, were introduced in evidence by the petitioners in the District Court in the above-entitled cases as part of said Exhibit No. 9, constituted all the evidence introduced before the Interstate [fol. 2964] Commerce Commission in the aforesaid proceedings; and said Exhibits Nos. 1 to 9, inclusive, introduced by petitioners, and the aforesaid affidavits, introduced by intervening defendants, together with the affidavits referred to in the cross-appeal and the stipulations of counsel, constituted all the evidence submitted at the hearings before the District Court in the above-entitled cases.

2. That the said statement in narrative form of the testimony introduced before the Interstate Commerce Commission in the aforesaid proceedings shall be substituted for the certified copy of the original testimony of the witnesses and shall have the same force and effect upon appeal as the original testimony.

3. Petitioners' Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, and all parts of Exhibit No. 9 except the transcript of oral testi-

mony before the Interstate Commerce Commission and except said four (4) verified statements, shall stand as original exhibits and shall be transmitted on appeal instead of transcripts thereof; and the aforesaid narrative statement, together with this stipulation and the order of the court pursuant hereto, shall likewise be so transmitted.

John W. Bricker, Attorney General of the State of Ohio. Dow C. Power, Solicitor for the Public Utilities Commission of Ohio. Clair Crawford, Andrew P. Martin, Solicitor for the Wheeling & Lake Erie Railway Company. E. S. Ballard, Solicitor for Intervening Plaintiffs. Elmer B. [fol. 2965] Collins, Special Assistant to the Attorney General of the United States. J. Stanley Payne, Solicitor for the Interstate Commerce Commissioner. John Fox Weiss, Solicitor for the Public Service Commission of the Commonwealth of Pennsylvania. Guernsey Orcutt, Solicitor for the Baltimore and Ohio Railroad Company and Other Intervening Railroads. Henry C. Hall, Alex. M. Bull, Solicitor for the Consolidation Coal Company and the Receivers thereof. August G. Gutheim, Solicitor for Western Pennsylvania Coal Traffic Bureau and various Intervening Coal Companies.

[fols. 2966 & 2967] PETITIONERS' EXHIBIT No. 1

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition filed September 13, 1932,
Order of the Commission entered October 3, 1932,
Supplemental petition filed October 22, 1932,
Order of the Commission entered October 28, 1932,
Intervening petition of the Toledo Chamber of Commerce filed November 10, 1932,
Order of the Commission entered December 7, 1932,
Petition for modification and clarification of the Commission's orders filed December 7, 1932,

Order of the Commission entered November 26, 1932, and

Order of the Commission entered February 28, 1933,

in Case No. 25566, Intrastate Rates on Bituminous Coal Within the State of Ohio, the originals of which are now on file and of record in the office of this Commission.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 2968] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. —

In the Matter of BITUMINOUS COAL RATES BETWEEN POINTS IN THE STATE OF OHIO

PETITION

Come now your petitioners, The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Erie Railroad Company; The Monongahela Railway Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; Norfolk & Western Railway Company; The Pennsylvania Railroad Company; Pittsburgh, Chartiers and Youghiogheny Railway Company; The Pittsburgh & Lake Erie Railroad Company; Western Maryland Railway Company; and The Virginian Railway Company (hereinafter called petitioners), and file this their petition, and in support of said petition respectfully show:

I

Your petitioners are corporations existing under the laws of the respective states in which they were incorporated and which have for many years past and are now either operating lines of railroad within the State of Ohio, and [fol. 2969] engaged in the business of transporting pas-

sengers and freight intrastate between points in the State of Ohio, or engaged and have been engaged for many years past in transporting passengers and freight moving in interstate commerce between points in the State of Ohio and points in other states, or both.

The Wheeling and Lake Erie Railway Company is likewise a corporation, having been incorporated within the State of Ohio, and has been for many years past and is now operating lines of railroad within the State of Ohio, and has been and is now engaged in the business of transporting passengers and freight intrastate between points in the State of Ohio and is likewise engaged and has been engaged for many years past in transporting passengers and freight moving in interstate commerce between points in the State of Ohio and points in other states.

Each of your petitioners, as well as the Wheeling and Lake Erie Railway Company, is a common carrier of passengers and freight by railroad subject to the provisions of the Interstate Commerce Act as amended and supplemented. This petition is filed in pursuance of the provisions of the Interstate Commerce Act as amended and supplemented and more particularly in pursuance of the provisions of Sections 3 and 13 of said Act as amended and supplemented.

II

Your petitioners respectfully show that in Docket 12851, reported at 80 I. C. C. 663, your Honorable Commission found among other things as follows (page 690):

[fol. 2970] "We find that the application by respondents of rates for the transportation of bituminous coal, in carloads, in intrastate commerce from mines in Ohio to destinations in affected territory in northwestern Ohio and in non-affected differential territory in northeastern Ohio lower than the rates applied for correspondingly similar services in the transportation of bituminous coal, in carloads, in interstate commerce from those mines to destinations in such territories in Ohio has resulted, and will result, in undue preference of shippers and localities in intrastate commerce within the State of Ohio, undue prejudice to shippers and localities in interstate commerce, and unjust discrimination against interstate commerce.

The differentials between southern Ohio and the Crescents prescribed in this report on interstate traffic will go far to remove the undue prejudice and preference and unjust discrimination against interstate commerce, which we find to exist in the relation of interstate and intrastate rates from Ohio, and it may be that respondents upon application to the Ohio Commission will be authorized to complete the removal and restore the rate parity formerly existing. No order will be entered at this time in No. 12851."

That subsequent thereto, on, to-wit, September 27, 1923, an adjustment reflecting the differentials so prescribed was made effective and continued substantially in effect until August 1, 1932, when it was disrupted by order of the Public Utilities Commission of Ohio and by the action of the Wheeling and Lake Erie Railway Company, as will more particularly hereinafter appear.

III

Your petitioners further respectfully show that in a certain proceeding before the Public Utilities Commission of Ohio, entitled Republic Steel Corporation, complainant, v. The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, The Pittsburgh & West Virginia Railway Company, and Wheeling and Lake Erie Railway Company, defendants, known as Docket 7252 the said Public Utilities [fol. 2971] Commission filed its report and order on the 30th day of June, 1932, requiring the above named defendants to establish on or before August 1, 1932, upon notice to the Commission and to the general public, by not less than three days' filing and posting in the manner prescribed by law, and thereafter to maintain and apply to the transportation of bituminous coal, in carloads, from mines and shipping points in the Massillon, Middle-Coshocton and Ohio No. 8 districts to Canton and Massillon, Ohio, rates in cents per net ton which shall not exceed the following:

(1) From Brewster (Massillon City No. 8 mine), 60 cents to Massillon and 72 cents to Canton, Ohio;

(2) From North Industry (Black Oak Mine No. 3), 60 cents to Canton and 80 cents to Massillon, Ohio;

(3) From all mines and shipping points in the Massillon and Middle-Coshocton districts, except Brewster and North Industry, 80 cents to Canton and Massillon, Ohio;

(4) From all mines and shipping points in the Ohio No. 8 districts, 108 cents to Canton and Massillon, Ohio.

That on July 26, 1932, said Commission amended its order of June 30, 1932, so as to require such order to become effective on not less than one day's notice, instead of three days' notice. The above named defendants have complied with the Commission's order by the publication of the rates therein prescribed in Supplements 27-A, 28 and 29 to Agent F. V. Davis' Tariff Ohio No. 48, and said rates are still in force. The following table indicates the rates in effect, together with the amounts of the reductions:

[fol. 2972]

To Canton and Massillon

From	Rates in effect 7,31,32	Rates in effect 8/1/32	Reductions
Massillon	101	80	21
Middle-Coshocton	101	80	21
No. 8	126	108	18

IV

In a certain proceeding known as Empire Steel Corporation, complainant v. The Baltimore and Ohio Railroad Company, defendant, Docket No. 7036, the Public Utilities Commission of Ohio filed its report and order on July 25, 1932, in which it required the above mentioned defendant to establish on or before August 20, 1932, upon notice to the Commission and to the general public by not less than three days' filing and posting in the manner prescribed by law, and thereafter to maintain and apply to the transportation of bituminous coal, in carloads, from all mines and coal shipping points on its lines in the Cambridge district of Ohio to Mansfield, Ohio, a rate not in excess of $1.51 per net ton.

The Commission's order has been complied with by the filing of Supplement 29 to Agent F. V. Davis' Ohio No. 48 in which a rate of $1.51 was made effective August 20, 1932, as required by the Commission's order and is still in force. The result of this decision by the Commission and compliance therewith was a reduction in the rate from

the Cambridge district to Mansfield, Ohio, and certain intermediate points from $1.76 to $1.51, or a reduction of 25 cents per net ton.

V

That on July 25, 1932, the Public Utilities Commission of Ohio issued its order in a proceeding designated "Special [fol. 2973] Permission 6492" in which the Commission denied the application of your petitioners, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company; The Pittsburgh & Lake Erie Railroad Company, in which The Pittsburgh & West Virginia Railway Company joined for suspension of Agent F. V. Davis' Supplement 27-A to Ohio No. 48, published effective ~~August 1, 1932~~, on not less than one day's notice, establishing rates on bituminous coal, carloads, from all mines and coal shipping points on the Wheeling and Lake Erie Railway in the Ohio No. 8, Middle and Massillon districts to Cleveland, Lorain, Huron, Akron, and other points in Ohio, considerably lower than rates previously maintained between the same points; that the said rates so published by the Wheeling and Lake Erie Railway Company, as aforesaid, have become effective and are now in force. The following are illustrative of the reductions made by the Wheeling and Lake Erie Railway Company from the districts shown to the destinations named. Rates are shown in cents per net ton.

Rates in Effect

From	No. 8			Middle			Massillon		
To:	7/31/32	8/1/32	Reduction	7/31/32	8/1/32	Reduction	7/31/32	8/1/32	Reduction
Cleveland, O.	174	145	29	154	122	32	154	108	46
Huron, O.	174	155	19	164	134	30	159	115*	44
Lorain, O.	174	145	29	154	128	26	154	108	46
Akron, O.	151	128	23	126	101	25	126	87	39

*Lake Rate 128

VI

Your petitioners further respectfully show that by its order of September 2, 1932, in proceeding known as Docket No. 8072, the Public Utilities Commission of Ohio entered upon an inquiry upon its own motion into the rates main- [fol. 2974] tained by The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company; The New

York Central Railroad Company; Wheeling and Lake Erie Railway Company, and the Pittsburgh & West Virginia Railway Company for the transportation of bituminous coal from points in the Cambridge, Crooksville and Hocking districts to Cleveland, Lorain, Huron, Akron, Orrville and Rocky River, Ohio, and points intermediate thereto.

Your petitioners further state that the object of said inquiry is patently a revision downward of all coal rates intrastate in Ohio and that in and by said order the Public Utilities Commission of Ohio has cited the above named carriers to appear at its offices in Columbus, Ohio, to show cause why their rates for the transportation of coal from the Cambridge, Crooksville and Hocking districts shall not be established upon the same or substantially the same basis as the rates required by said Commission in its orders in the Republic Steel Case and the Empire Steel Case, hereinbefore referred to.

Your petitioners further state that they have cause to, and do verily believe that it is the intention of said Commission to require reductions in the rates from the districts last named and that said reductions will be ordered and required solely upon the pretext that said rates are upon a higher level than the rates which the Commission required to be established in its orders in the Republic Steel Case and Empire Steel Case, hereinbefore referred to.

VII

Your petitioners further respectfully show that by reason of said orders of the Ohio Public Utilities Commission, [fol. 2975] specifically referred to in paragraphs III, IV and V hereof, your petitioners and other carriers operating in the State of Ohio are now required and compelled to charge for the transportation of bituminous coal, intrastate between the points covered by said orders, a lower basis of rates and charges than that contemporaneously prevailing under the interstate rates to and from points in the State of Ohio from and to points in adjoining states, and particularly lower than the interstate adjustment prescribed by your Honorable Commission from the producing territories in the entire Appalachian region to consuming points within the State of Ohio.

That in other proceedings and by other orders of the said Ohio Public Utilities Commission, your petitioners have

been required to establish between other points in the State of Ohio, in what is known as non-affected territory, rates on bituminous coal which are materially lower than the basis of rates charged by your petitioners for the transportation of bituminous coal under similar circumstances and conditions in interstate commerce and between points in other states.

The result is to cause and create an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other hand, and to cause an undue, unreasonable and unjust discrimination against interstate commerce and to cause an undue burden upon interstate commerce, all of which is forbidden and declared to be unlawful by the Interstate Commerce Act, particularly Sections 3 and 13 thereof.

Your petitioners show that the intrastate traffic on bituminous coal in the State of Ohio, and to and from said state, [fol. 2976] constitutes a large and important part of the traffic of your petitioners (amounting annually to many millions of tons) and that the revenue loss resulting from the action of the Public Utilites Commission of Ohio in the cases above mentioned will amount in the aggregate to several millions of dollars annually.

VIII

Wherefore, your petitioners pray that your Honorable Commission enter the order forwith in Docket 12851 which your Honorable Commission withheld at the time its report was issued therein and/or institute at an early date an investigation with respect to the matters and things herein set forth; and that after due notice has been given to the State of Ohio and the authorities thereof, an order be entered declaring discriminatory, prejudicial, unjust and unlawful and as creating an undue burden upon interstate commerce, the rates and charges and each of them requiring to be observed as a result of the order of the Ohio Public Utilities Commission for and in connection with the intrastate transportation of bituminous coal within the State of Ohio; and that this Commission, by its order, prohibit such discrimination, preference and prejudice as between persons and localities in intrastate commerce on the one hand, and interstate commerce on the other hand, and such un-

lawful burden upon interstate commerce, and prescribe the rates and charges or the maximum and minimum thereafter to be observed for and in connection with the intrastate transportation of bituminous coal within the State of Ohio in such manner as in its judgment will remove such advantage, preference, prejudice or discrimination aforesaid.

And your petitioners pray for such other and further [fol. 2977] general relief in the premises as to your Honorable Commission may seem right and proper.

Respectfully submitted, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Erie Railroad Company, The Monongahela Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Norfolk & Western Railway Company, The Pennsylvania Railroad Company, Pittsburgh, Chartiers and Youghiogheny Railway Company, The Pittsburgh & Lake Erie Railroad Company, Western Maryland Railway Company, The Virginian Railway Company, Petitioners, by Roy S. Kern, Agent for the Above Named Petitioners; Charles R. Webber, Baltimore and Ohio Bldg., Baltimore, Md.; M. Carter Hall, 823 E. Main Street, Richmond, Va.; Marion B. Pierce, Midland Building, Cleveland, Ohio; Leo P. Day, LaSalle Street Station, Chicago, Ill.; William J. Stevenson, Terminal Tower Bldg., Cleveland, Ohio; D. Lynch Younger, Transportation Bldg., Washington, D. C.; Guernsey Orcutt, 925 Pennsylvania Station, Pittsburgh, Pa.; E. S. Williams, Continental Trust Bldg., Baltimore, Md.; Fred N. Oliver, John C. Donally, Washington, D. C., Attorneys for Petitioners.

September 10, 1932.

[fols. 2978 & 2979] BEFORE INTERSTATE COMMERCE COMMISSION

No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

ORDER—Oct. 3, 1932

It appearing, That a petition has been filed on behalf of common carriers by railroad operating within the State of

Ohio, averring that the Public Utilities Commission of Ohio, by orders promulgated on the 30th day of June, 1932, as amended, and on the 25th day of July, 1932, required petitioners to establish and maintain rates on bituminous coal within said state which are less than those permitted or required to be established and maintained by this Commission on interstate traffic;

It further appearing, That the said petitioners allege that the observance by them of said orders of the Public Utilities Commission of Ohio causes and results in undue and unreasonable preference and advantage to intrastate commerce to the undue and unreasonable prejudice and disadvantage of interstate commerce, and results in unjust and unreasonble discrimination against interstate commerce;

It further appearing, That by said petition there have been brought in issue the rates imposed by authority of the State of Ohio:

It is ordered, That the Commission, upon its own motion, enter upon an investigation to determine whether the rates on bituminous coal required by the Public Utilities Commission of Ohio to be maintained by said railroads cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by petitioners in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist.

It is further ordered, That all railroads subject to our jurisdiction operating within the State of Ohio be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the State of Ohio be notified of this proceeding by sending a copy of this order and of said petition, by registered mail, addressed to the Governor of the State of Ohio, at Columbus, Ohio, and to the Public Utilities Commission of Ohio, at Columbus, Ohio.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the

office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 2980] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25556

In the Matter of BITUMINOUS COAL RATES BETWEEN POINTS IN THE STATE OF OHIO

SUPPLEMENTAL PETITION

Come now your petitioners, The Baltimore and Ohio Railroad Company; The Chesapeake and Ohio Railway Company; Erie Railroad Company; The Monongahela Railway Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; Norfolk & Western Railway Company; The Pennsylvania Railroad Company; Pittsburgh, Chartiers and Youghiogheny Railway Company; The Pittsburgh & Lake Erie Railroad Company; Western Maryland Railroad Company, and The Virginian Railway Company (hereinafter called petitioners), and file this their supplemental petition, and in support of said petition respectfully say:

I

Your petitioners repeat the allegations contained in Paragraphs I, II and III of their original petition, and ask that [fol. 2981] said allegations be read as a part of this, their supplemental petition.

II

Since the filing of the original petition in this proceeding dated September 10, 1932, The Public Utilities Commission of Ohio in its Docket No. 8072, referred to in Paragraph VI of said original petition, has entered an order requiring The Baltimore and Ohio Railroad Company, The Pennsyl-

vania Railroad Company, The New York Central Railroad Company and The Wheeling and Lake Erie Railway Company to establish on or before September 20, 1932, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law and thereafter to maintain and apply rates on bituminous coal from the Cambridge, Crooksville and Hocking Districts in the State of Ohio to Cleveland, Lorain Huron, Akron, Orrville, Rocky River, Ohio, and points intermediate thereto, which rates from the Cambridge District shall not exceed the rates currently maintained from the No. 8 Ohio District to the same destinations; except that in instances in which there were differences in rates from and to specific points prior to August 1st and September 2nd, 1932, the same differences may be maintained, and from the Hocking and Crooksville Districts to said destinations hereinbefore named, rates which shall not exceed the rates currently maintained from the No. 8 District to said destinations by a greater number of cents per ton than the [fol. 2982] rates from the Hocking and Crooksville Districts prior to said reduction on August 1 and September 2, 1932.

III

That the effect of said order of The Public Utilities Commission of Ohio was to require substantial reductions in the defendants' intrastate rates on bituminous coal, in carloads, from the Cambridge, Hocking and Crooksville districts to the destinations named herein. Said order has been complied with by the carriers hereinbefore named and said reduced rates as prescribed by said Commission have been established and are now in effect. The following is illustrative of the reductions in rates resulting from the said order. Rates are shown in cents per net ton.

	From					
	Cambridge		Hocking		Crooksville	
To	A	B	A	B	A	B
Cleveland	174	145	189	160	176	147
Lorain	174	145	189	160	176	147
Huron	174	145	189	160	176	157
Akron	151	128	189	160	151	128
Orrville	151	122	189	160	139	122
Rocky River	174	145	189	160	189	160

A—Rates in effect prior to August 29th, 1932.
B—Present rates.

IV

A copy of the order of The Public Utilities Commission of Ohio dated September 15, 1932, in its Docket No. 8072 is attached hereto marked Appendix A and is asked to be read as a part of this petition.

[fol. 2983] V

Your petitioners further respectfully show that on September 22, 1932, The Public Utilities Commission of Ohio, on its own motion, instituted an investigation of the rates on bituminous coal from mines and coal shipping points in the Pomeroy District (as set forth and described in Agent F. V. Davis' Coal Tariff Ohio No. 48 as amended) to Cleveland, Huron, Akron, Orrville, Rocky River, Ohio, and points intermediate thereto; that said investigation was set down for hearing on October 14, 1932, and that thereafter by order dated October 18, 1932, in the proceeding known as Docket No. 8097, The Public Utilities Commission of Ohio required the defendant, The New York Central Railroad Company, and its connecting carriers as they participate in the traffic, to establish over available routes through non-effected territory, on or before October 28, 1932, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law and thereafter to maintain and apply to the transportation of bituminous coal, in carloads, from all mines and coal shipping points on its lines in the Pomeroy District of Ohio to said destinations which shall not exceed the rates contemporaneously maintained from the No. 8 District to the destinations herein named by a greater number of cents per net ton than the rates from the Pomeroy District prior to the reductions on August 1 and September 2, 1932, exceeded the rates from No. 8 District to the same destinations.

The effect of said order of The Public Utilities Commission of Ohio is to require substantial reductions in the de-[fol. 2984] fendants' intrastate rates on bituminous coal in carloads from the Pomeroy District to the destinations named herein; the rates to the destinations named being reduced from $1.89 to $1.60, a reduction of 29 cents per net ton, except to Huron where the rate will be made $1.70, a reduction of 19 cents per net ton.

VI

A copy of the said order of The Public Utilities Commission of Ohio dated October 18, 1932, in its Docket No. 8097, is attached hereto marked Appendix B and is asked to be read as a part of this petition.

VII

Your petitioners herein operating lines of railroad from mining districts in the State of Ohio further respectfully show that they are threatened with complaints seeking many additional reductions in intrastate rates from their said Ohio producing districts to various other destinations in the State of Ohio via their intrastate routes as a result of the decisions and orders of The Ohio Public Utilities Commission referred to in their original petition and in this, their supplemental petition.

VIII

Your petitioners further respectfully show that as a result of the proceedings of The Ohio Public Utilities Commission referred to in Paragraphs III and IV of their original petition and of the voluntary action of The Wheeling and Lake Erie Railway Company in reducing its intrastate rates for the transportation of bituminous coal from [fol. 2985] the Ohio No. 8 District to Cleveland, Lorain, Huron, Akron and other points in Ohio, and in order to meet the competition of operators mining and shipping coal in said named Ohio No. 8 District, The Pittsburgh & West Virginia Railway Company on August —, 1932, filed its tariff, Supplement 40 to I. C. C. No. 225 to become effective on September 9, 1932. By this tariff it was proposed to make reductions in its interstate rates on bituminous coal, in carloads, from mines on its line in the Pittsburgh District in Pennsylvania to Cleveland, Lorain, Huron, Akron and other intermediate points, the rates so proposed being 10 cents per ton higher than the rates voluntarily established by The Wheeling and Lake Erie Railway Company from its mines in the Ohio No. 8 District to the same destinations; that the said The Pittsburgh & West Virginia Railway Company's tariff, upon protest of your petitioners and others, was suspended by the Interstate Commerce

Commission and a hearing before said Interstate Commerce Commission with respect to the lawfulness of said reduced rates was assigned for October 4, 1932; that thereafter, by order entered October 3, 1932, the Interstate Commerce Commission vacated and set aside its order of September 8, 1932, suspending said reduced rates of The Pittsburgh & West Virginia Railway Company, and the hearing concerning the lawfulness of the said rates was postponed to November 9, 1932, at Washington, D. C. As a result of the vacation of its said order the reduced interstate rates of The Pittsburgh & West Virginia Railway Company from [fol. 2986] the Pittsburgh District to the destinations named have been established and are now in effect.

The action of The Public Utilities Commission of Ohio in entering the several orders hereinbefore referred to, the action of The Wheeling and Lake Erie Railway Company and the action of The Pittsburgh & West Virginia Railway Company, as set forth in the original petition and in this supplemental petition will promptly or ultimately lead to the reduction of rates from all bituminous coal-producing districts in the Appalachian region to destinations in all of Central Freight Association territory. If the reduced rates of The Pittsburgh & West Virginia Railway Company from the Pittsburgh District as referred to herein are found by this Commission to be lawful, the entire C. F. A. coal rate adjustment will be impaired and further reductions in interstate rates on bituminous coal will probably follow, which would inevitably have an unfavorable, and possibly disastrous, effect upon these petitioners' application for the institution of an investigation by this Commission of bituminous coal rates between points in the State of Ohio under Sections 3 and 13 of the Interstate Commerce Act as prayed for herein.

Petitioners, therefore, respectfully insist that the facts set forth in their original petition and in this supplemental petition establish the necessity for prompt action by this Commission in order to protect petitioners' revenues from being unreasonably and unnecessarily and unjustly depleted; and to that end they respectfully request that the Commission's investigation of bituminous coal rates be- [fol. 2987] tween points in the State of Ohio as prayed for in their original petition and in this supplemental petition should be consolidated with the Commission's investigation

of the lawfulness of the reduced rates of The Pittsburgh & West Virginia Railway Company from the Pittsburgh district to destinations named herein, known as I. & S. Docket No. 3801, and that all of said proceedings be set for hearing at the same time so that all of the questions involving every phase of the lawfulness of the rates involved in said proceedings may be promptly disposed of in one report.

Wherefore, your petitioners pray that this Honorable Commission may enter an order consolidating the proceedings referred to in the original petition and in this supplemental petition with the proceedings already instituted in and known as I. & S. No. 3801 and instituting, as early as possible, an investigation with respect to the matters and things herein set forth; that after due notice has been given to the State of Ohio and the authorities thereof, an order be entered declaring discriminatory, prejudicial, unjust and unlawful and as creating an undue burden upon interstate commerce the rates and charges, and each of them, required to be established and maintained as a result of the said orders of The Public Utilities Commission of Ohio for and in connection with the intrastate transportation of bituminous coal within the State of Ohio; that this Commission by its order prohibit such discrimination, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the [fol. 2988] other hand, and such unlawful burden upon interstate commerce, and prescribe the rates and charges or the maximum and minimum thereafter to be observed for and in connection with the intrastate transportation of bituminous coal within the State of Ohio in such manner as, in its judgment, will remove the advantage, preference, prejudice or discrimination as aforesaid.

And your petitioners pray for such other and further general relief in the premises as to your Honorable Commission may seem right and proper.

Respectfully submitted,

The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Erie Railroad Company, The Monongahela Railway Company, The New York Central Railroad Company, The New York, Chicago & St. Louis Railroad Company, Pittsburgh, Chartiers & Youghiogheny

Railway Company, The Pittsburgh & Lake Erie Railroad Company, Western Maryland Railway Company, The Virginian Railway Company, Petitioners, by Roy S. Kern, Agent for the above named Petitioners, Wabash, Building, Pittsburgh, Pa.; Charles R. Webber, Baltimore and Ohio Bldg., Baltimore, Md.; M. Carter Hall, 823 E. Main Street, Richmond, Va.; Marion B. Pierce, Midland Building, Cleveland, Ohio; Leo P. Day, LaSalle Street Station, Chicago, Ill.; William J. Stevenson, Terminal Tower Bldg., Cleveland, Ohio; D. Lynch Younger, Transportation Bldg., Washington, D. C.; Guernsey Orcutt, 925 Pennsylvania Station, Pittsburgh, Pa.; E. S. Williams, Continental Trust Bldg., Baltimore, Md.; Fred N. Oliver, John C. Donnally, Washington, D. C., Attorneys for Petitioners.

October 20, 1932.

[fols. 2989-2993] Appendix A omitted, see exhibit "F," printed side page 117 ante.

[fols. 2994-2998] Appendix B omitted, see exhibit "G," printed side page 119 ante.

[fols. 2999 & 3000] BEFORE INTERSTATE COMMERCE COMMISSION

No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

SUPPLEMENTAL ORDER—Oct. 28, 1932

It appearing, That on October 3, 1932, the Commission, upon petition filed on behalf of certain common carriers by railroad operating in the State of Ohio, entered into an investigation concerning the lawfulness of the rates referred to in said petition;

It further appearing, That a petition dated October 20, 1932, has been filed on behalf of certain common carriers by railroad operating in the State of Ohio, averring that the Public Utilities Commission of Ohio, by orders promulgated on the 15th day of September, 1932, and on he 18th day of October, 1932, required petitioners to establish and maintain certain rates on bituminous coal within said State; and alleging that the observance by petitioners of said orders of the Public Utilities Commission of Ohio causes and results in undue and unreasonable preference and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce, and results in unjust and unreasonable discrimination against interstate commerce;

It further appearing, That by said petition there have been brought in issue the rates imposed by the authority of the State of Ohio:

It is ordered, That the Commission, upon its own motion, enter upon an investigation to determine whether the rates on bituminous coal required by the Public Utilities Commission of Ohio to be maintained by said railroads cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foregn commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by petitioners in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist.

It is further ordered, That all railroads subject to our jurisdiction operating within the State of Ohio be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the State of Ohio be notified of this proceeding by sending a copy of this order and of said petition, by registered mail, addressed to the Governor of the State of Ohio, at Columbus, Ohio, and to the Public Utilities Commission of Ohio, at Columbus, Ohio.

It is further ordered, That notice of this proceeding be given the public by depositing a copy of this order in the

office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be, and it is hereby, assigned for hearing on December 5, 1932, 10 o'clock A. M., Standard Time, at the Deshler-Wallick Hotel, Columbus, Ohio, before Examiner Trezise.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3001] BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO
PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, The Toledo Chamber of Commerce, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That, The Toledo Chamber of Commerce is a voluntary organization, not for profit, duly incorporated under the laws of the State of Ohio, and having for its objects, among other things, the development and furtherance of the commercial, industrial and municipal interests, through unity of action, of the City of Toledo.

[fol. 3002] II

That, The Toledo Chamber of Commerce numbers among its members many commercial and industrial interests, which in the conduct of their several businesses, are purchasers, purveyors, and consumers of bituminous coal, in carload lots, mined in and shipped from the various coal producing districts lying wholly within the State of Ohio; and that these members, located in a highly industrialized state, are naturally in close competition with commercial and industrial units located in that portion of Northeastern

Ohio designated as destination territory in Docket No. 25566.

III

That your petitioner, The Toledo Chamber of Commerce, in order that repetition may be avoided, accepts as a portion of the historical background for the present situation, paragraphs II, III, IV, V, and that portion of paragraph VI dealing with the order of the Public Utilities Commission of Ohio in P. U. C. Docket No. 8072 of the Section Thirteen petition filed by the interested carriers with your honorable Commission and dated September 10, 1932.

IV

That, to bring this historical background down to date, your petitioner desires to call to your attention the order of the Public Utilities Commission of Ohio in Docket No. 8097, dated October 14th, 1932, growing out of an investigation upon its own motion, wherein rates from the Pomeroy District of Ohio to the involved destination points in Northeastern Ohio on the same relative basis as prevailed to said destination points from the No. 8 District prior to the reductions made on August 1st and September 2nd, 1932, were ordered in by the Ohio Commission to become effective not later than October 28th, 1932.

V

[fol. 3003] That, to the end that this Commission may have before it in brief form the exact nature of the differences in rates from the Ohio coal producing districts to the Northeastern Ohio destination points, and to Toledo as a representative destination point in Northeastern Ohio, there is attached hereto and made a part hereof, Appendix A, a statement showing such rates both prior and subsequent to the various orders of the Ohio Commission which reduced the rates to certain Northeastern Ohio points.

VI

That, while there is confronting your petitioners this readjustment of rates on coal in carload lots moving in intrastate commerce from producing points in Northeastern Ohio through orders of the Public Utilities Commission of

Ohio, no similar readjustment of rates is contemplated by the Ohio Commission from the Ohio origin districts to Toledo, the key-point in Northwestern Ohio; and that this is brought about by the fact that intrastate rates on coal in carload lots from Ohio mines to Toledo and other Northwestern Ohio points have been 'frozen' because of the decisions of your honorable body in I. & S. Docket No. 774, 46 I. C. C. 66, Bituminous Coal to Central Freight Association territory, and later, in 80 I. C. C. 663, Ohio-Michigan Coal Cases.

VII

That, this Commission has now, upon its own motion, entered upon an investigation to determine whether the rates just now ordered in by the Ohio Commission from origin groups to certain Northeastern Ohio destination points "cause or will cause any undue or unreasonable [fol. 3004] advantage, preference or prejudice, as between persons or localities in intrastate commerce on the one hand and interstate or foregn commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and also, to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by petitioners in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist."

The above quoted language from your order of October 3rd, 1932, and supplemental order of October 28th, 1932, Docket No. 25566, Rates on Bituminous Coal Within the State of Ohio.

VIII

That, it must at once be obvious that for this Commission to prescribe rates for the movement of coal, in carload lots, within Ohio, which shall not unduly prefer intrastate commerce nor unjustly discriminate against interstate commerce, and which would apply only from Ohio mines to Northeastern Ohio, would still leave the coal rate situation within Ohio in a state of confusion. That this is so because such an order, designed to correct such alleged preference of intrastate traffic and prejudice against interstate traffic, without consideration being given to the complete intra-

state coal rate structure, must inevitably create precisely the same situation with respect to destination territories within Ohio, except that such allegations would run wholly against intrastate commerce.

[fol. 3005]

IX

That, the carriers, in paragraph VIII of their Section Thirteen petition, ask that an order be entered in I. C. C. Docket No. 12851, the Section Thirteen phase of the Ohio-Michigan Coal Cases previously referred to. Your petitioner protests the issuance of such an order until an opportunity shall have been given us to participate in the proceedings which have for their object the promulgation of such an order. The Toledo Chamber of Commerce was a party of record in the Ohio-Michigan Coal Cases, in which was incorporated and heard concurrently I. C. C. Docket No. 12851.

X

That, while we have referred in paragraph VI of our petition, to "freezing" of the coal rates from Ohio mines to so-called "affected" territory, this statement does not hold with respect to rates from the Cambridge and No. 8 districts to Toledo and Northwestern Ohio points. The order issued by your honorable commission in the original complaint in the Ohio-Michigan Coal Cases, 80 I. C. C. 663, or Docket No. 12698 went only to rates from Ohio mines in the Hocking, Crooksville, Pomeroy and Jackson districts, and is so stated in the first paragraph on page 111 of the order of the Commission relating to the aforesaid Docket No. 12698. It is therefore obvious that the rates from the Cambridge and No. 8 districts to "affected" territory were not fixed in the Ohio-Michigan Coal Cases. They were apparently in issue in I. C. C. Docket No. 12851 and the petitioning carriers ask now that an order be entered in that related case, fixing a scale of rates for the movement of coal from certain Ohio groups to Toledo and other Northwestern Ohio points, nine years after the record has been disposed of. To exclude, then, your petitioner [fol. 3006] from participation in the instant case, would, we earnestly submit, be a gross injustice. The record could not be considered as complete if your petitioner may not be heard therein.

XI

That, if the adjustment from the Ohio origin groups to Toledo may not be reviewed concurrently with the rates from said origin groups to destination points in Northeastern Ohio at the joint hearing to begin in Columbus, O., on December 5th, 1932, there can only be one result, viz: a partial adjustment of the Ohio intrastate rates, which would leave out of consideration rates to Toledo and other points in Northwestern Ohio from these Ohio producing groups. Your petitioner, The Toledo Chamber of Commerce, would, in the protection of its commercial and industrial interests, then have no alternative but to come before this commission, or the Ohio Commission, or both, with a formal complaint. The result would be another extended proceeding, more or less repetition of testimony and exhibits and consequent duplication of records. Such a proceeding would be costly to your petitioner, to the carriers, and to the Commission, an expense which cannot be economically justified, particularly at this time.

Wherefore, said Toledo Chamber of Commerce respectfully asks that the issues be broadened to allow consideration of the adjustment of rates on coal in carload lots, from Ohio origin groups to Toledo, O., concurrently with the review of rates from said origin points to destination points in Northeastern Ohio, and prays leave to intervene and be treated as a party hereto, with the right to have notice of and to appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel [fol. 3007] upon brief, and at the oral argument, if oral argument be granted.

The Toledo Chamber of Commerce, Clare B. Tefft,
Transportation Commissioner.

Suite 505-507 Richardson Bldg., Toledo, O.

November 8, 1932.

[fol. 3008] Appendix "A"

From	Rates to:							
	Canton, O.		Massillon, O.		Cleveland, O.		Akron, O.	
Ohio Mines	Old	New	Old	New	Old	New	Old	New
Pomeroy dist.	1.89	1.89	1.89	1.89	1.89	1.60	1.89	v1.72 1.60 v1.72
Hocking dist.	1.89	1.89	1.89	1.89	1.89	1.60	1.89	1.60
Crooksville dist.	A1.89 B1.51 c1.26	c1.22	B1.89 D1.76 c1.26	F1.53 c1.08	A1.89 c1.76	c1.60 c1.47	E1.89 F1.76 G1.57 H1.51	H1.28 G1.34 D1.53 L1.60
Cambridge dist.	B1.51 F1.26 c1.01	B1.51 F1.26	1.26	1.26	1.74	1.45 c1.08	1.51	1.28 A1.01
Massillon dist.	A1.13	.80	1.01	.72	1.54	A1.28	1.26	c .87
Middle Coshocton dist.	1.01 D1.51	.80	1.01 D1.51	.80	1.54	1.22	1.26	1.01
No. 8 dist.	1.26	1.08	1.26	1.08	1.74	1.45	1.51	1.28
No. 8 mine	A1.39					c1.08		A1.01
Massillon dist.	c1.01	.72	.76	.60	1.54	A1.28	1.26	c .87
Ky.-W.Va.-Tenn. Mines:								
Group 1, Inner Cresc.	2.64		2.64		2.64		2.64	
Groups 2, 3, 4, 5, Outer C.	2.39		2.39		2.39		2.39	
Penna. Mines:								
Pittsburgh No. 8 dist.	1.59	1.59	1.59	1.59	1.84	1.55	1.72	1.72
Connellsville dist.	1.65		1.65		1.90		1.78	

Tariff Authority:
Old Rate—Davis I. C. C. No. 48. New, Sups. 27-B, 27-E, 27-G I. C. C. 48. P. & W. Va.—P. & W. Va. I. C. C. No. 225, Sup. 40. C. & O. No. 100-F, I. C. C. No. 11138.

[fol. 3009]

From	Rates to						
	Lorain, O.		Huron, O.		Barberton, O.		Toledo
Ohio Mines	Old	New	Old	New	Old	New	Present
Pomeroy, O.	1.89	1.60	1.89	1.70	1.89	v1.72 1.60 V1.72	1.89
Hocking dist.	1.89	1.60	1.89	1.70	1.89	1.60	1.89
Crooksville dist.	K1.89 L1.76	D1.60 L1.47	M1.89 N1.76	1.70 C1.57	P1.89 S1.76 T1.51	T1.28 D1.53 L1.60 W1.66 X1.72	1.79
Cambridge dist.	1.74	1.45 A1.28	A1.74 B1.84	M1.55	1.51	1.28 A1.01	1.89
Massillon dist.	1.54	C1.08	1.59 L1.74	1.15	1.26	C .87	1.64
Middle Coshocton dist.	1.54	1.28	C1.64	1.34	1.26	1.01	1.79
No. 8 dist.	1.74	1.45	1.74	1.55	1.51	1.28	1.89
No. 8 mine		A1.28				A1.01	
Massillon dist.	1.54	C1.08	1.59	1.15	1.26	C .87	1.64
Ky.-W. Va.-Tenn. Mines:							
Group 1, Inner Crescent.	2.64		2.64		2.64		2.64
Groups 2, 3, 4, 5 Outer Cr.	2.39		2.39		2.39		2.39

Penna. Mines:							
Pittsburgh No. 8 dist....	1.84	1.84	1.84	1.65	1.72	1.72	2.39
Connellsville dist.....	1.90		2.22		1.78		2.39

A—Via routes not including W. & L. E.
B—Via W. & L. E. as destination carrier.
C—Via W. & L. E. direct, or P. R. R. direct, as may be.
D—Via B. & O. E.-Via N. Y. C.-A. C. Y.
F—Via B. & O. direct.
G—Via P. Co.-A. C. & Y.
H—Via P. Co. direct, or W. & L. E.-A. C. & Y.
K—Via N. Y. C.-B. & O., W. & L. E.-B. & O., W. & L. E.-L. W., Va., or N. Y. C. direct.
L—Via P. Co. and N. Y. C.
M—Via N. Y. C. as destination carrier.
N—Via W. & L. E. direct, or P. Co. and W. & L. E.
P—Via A. C. & Y., Erie, and P. Co. as destination carriers, except as shown under (T).
S—Via B. & O. direct, or W. & L. E., B. & O.
T—Via W. & L. E., A. C. & Y. or P. Co.
V—Via Erie as destin. carrier direct.
W—Via B. & O.-Erie, or W. & L. E.-Erie.
X—Via N. Y. C.-Erie.

[fol. 3010] *Duly sworn to by Clare B. Tefft. Jurat omitted in printing.*

[fols. 3011 & 3012] BEFORE INTERSTATE COMMERCE COMMISSION

No. 25566

SECOND SUPPLEMENTAL ORDER—Dec. 7, 1932

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

SECOND SUPPLEMENTAL ORDER—DEC. 7, 1932

It appearing, That on October 3, 1932, the commission upon petition filed on behalf of certain common carriers by railroad in the State of Ohio, entered into an investigation concerning the lawfulness of the rates referred to in said petition:

It further appearing, That upon supplemental petition of certain carriers the commission on October 28, 1932, issued its supplemental order modifying said order of October 3, 1932, to include other rates as enumerated in said supplemental petition;

It further appearing, That a second supplemental petition has been filed on behalf of certain common carriers by railroad operating in the State of Ohio averring that certain rates on bituminous coal, in carloads, within the State of Ohio from Ohio No. 8, Middle, Massillon, Cambridge,

Crooksville, Hocking, and Pomeroy districts to destinations in northeastern Ohio, including Canton, Massillon, Mansfield, Cleveland, Lorain, Huron, Akron, Orrville, Rocky River and intermediate points cause or result in undue and unreasonable prejudice and advantage to intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce, and result in unjust and unreasonable discrimination against interstate commerce;

It further appearing, That by said petition there have been brought in issue rates required, authorized, or permitted, by the authority of the state of Ohio:

It is ordered, That the commission upon its own motion enter upon an investigation to determine whether the existing rates on bituminous coal, in carloads, from Ohio No. 8, Middle, Massillon, Cambridge, Crooksville, Hocking, and Pomery districts to destinations in northeastern Ohio, including Canton, Massillon, Mansfield, Cleveland, Lorain, Huron, Akron, Orrville, Rocky River, and intermediate points required, authorized or permitted to be maintained by the Public Utilities Commission of Ohio cause or will cause any unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged between said origins and destinations for such transportation in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist.

It is further ordered, That all railroads subject to our jurisdiction operating within the State of Ohio, be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the State of Ohio be notified of this proceeding by sending a copy of this order and of said petition, by registered mail, addressed to the Governor of the State of Ohio, at Columbus, Ohio, and to the Public Utilities Commission of Ohio, at Columbus, Ohio.

It is further ordered, That notice of this proceeding be given the Public by depositing a copy of this order in the

office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be, and it is hereby assigned for hearing or further hearing on December 12, 1932, 10 o'clock A. M. Standard Time, at the Deshler-Wallick Hotel, Columbus, Ohio, before Examiner R. N. Trezise.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3013] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25566

IN THE MATTER OF BITUMINOUS COAL RATES BETWEEN POINTS IN THE STATE OF OHIO

PETITION FOR MODIFICATION AND CLARIFICATION OF THE COMMISSION'S ORDERS OF OCTOBER 3 AND OCTOBER 28, 1932, INSTITUTING AN INVESTIGATION OF BITUMINOUS COAL RATES BETWEEN POINTS IN THE STATE OF OHIO

Come now your petitioners, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Erie Railroad Company, The Monongahela Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Norfolk & Western Railway Company, The Pennsylvania Railroad Company, Pittsburgh, Chartiers and Youghiogheny Railway Company, The Pittsburgh & Lake Erie Railroad Company, Western Maryland Railway Company, and the Virginian Railway Company, and respectfully petition your Honorable Commission to modify and clarify its orders of October 3 and October 28, 1932, instituting an investigation of bituminous coal rates between points in the State of Ohio, so as definitely to include within the scope of such investigation rates published and maintained by the Wheeling & Lake Erie Railway Company, the Baltimore & Ohio Railroad Company, the New York Central Railroad Company, the Pennsylvania Railroad Company, the Pittsburgh & West Virginia Railway Company and their connections, on bituminous coal from the Ohio No. 8, Middle, Massillon, Cambridge, Hocking, Crooksville and

[fol. 3014] Pomery districts, in the State of Ohio, to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville, Rocky River, and intermediate destinations, and in support of their petition your petitioners respectfully show:

I

On September 10, 1932, your petitioners filed with your Honorable Commission their petition setting forth, among other things, that on July 25, 1932, The Public Utilities Commission of Ohio issued its order in a proceeding designated "Special Permission 6492", in which that Commission denied the application of your petitioners, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, The Pittsburgh & Lake Erie Railroad Company (in which application the Pittsburgh & West Virginia Railway Company joined) for suspension of Agent F. V. Davis' Supplement 27-A to Ohio Tariff No. 48, published effective August 1, 1932, on not less than one day's notice, establishing rates on bituminous coal, carloads, from all mines and coal shipping points on the Wheeling & Lake Erie Railway in the Ohio, No. 8, Middle and Massillon districts to Cleveland, Lorain, Huron, Akron, and intermediate points in the State of Ohio, considerably lower than rates previously maintained between the same points; that the said rates so published by the Wheeling & Lake Erie Railway Company as aforesaid have become effective and are now in force. The following are illustrative of the reductions made by the Wheeling & Lake Erie Railway Company from the districts shown to the destinations named, rates being shown in cents per net ton:

[fol. 3015]

From	Rates in Effect								
	No. 8			Middle			Massillon		
To	7/31/32	8/1/32	Reduction	7/31/32	8/1/32	Reduction	7/31/32	8/1/32	Reduction
Cleveland, O.	174	145	29	154	122	32	154	108	46
Huron, O.	174	155	19	164	134	30	159	115*	44
Lorain, O.	174	145	29	154	128	26	154	108	46
Akron, O.	151	128	23	126	101	25	126	87	39

*Lake Cargo Coal Rate 128.

That subsequent to the entering of the order of the Ohio Public Utilities Commission dated July 25, 1932, your petitioners duly filed with the said Ohio Public Utilities Com-

mission their application for a rehearing therein, as required by law, on or about the 3rd day of August, 1932, which said petition for rehearing was denied.

Your petitioners further say that, upon the issuance of the order of The Ohio Public Utilities Commission dated July 25, 1932, denying your petitioners' application for suspension of Supplement 27-A to Agent Davis' Tariff Ohio No. 48 and permitting the rates therein contained to become effective August 1, 1932, your petitioners filed with the Supreme Court of Ohio an application for stay of execution of the order of The Public Utilities Commission of Ohio, as aforesaid, and a petition in error, seeking to have the said order of The Public Utilities Commission of Ohio vacated and set aside; that your petitioners' said application for stay of execution of the said order of the Public Utilities Commission of Ohio was denied by the Supreme Court of that State.

[fol. 3016] 11

That shortly after July 25, 1932, and after The Public Utilities Commission of Ohio had issued its order in Special Permission Docket No. 6492 and because of the necessities of competition, your petitioners, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, and The Pennsylvania Railroad Company, applied to The Public Utilities Commission of Ohio for permission to publish rates to meet the rates which said The Public Utilities Commission of Ohio had already permitted the Wheeling & Lake Erie Railway Company to publish; that hearing was had on said application on August 28, 1932, and that thereafter, on August 30, 1932, The Public Utilities Commission of Ohio issued its order in Special Permission Docket No. 6570, authorizing the above-named petitioners to publish, effective on one day's notice, rates from all of the mines and coal-shipping points served by them in the Ohio No. 8, Middle and Massillon districts to Cleveland, Lorain, Huron, Akron and intermediate points on the same basis as those published by the Wheeling & Lake Erie Railway Company, as aforesaid, and said reduced rates so authorized by The Public Utilities Commission of Ohio are now in effect.

Petitioners say that the competition which required them to make said application to The Public Utilities Commis-

sion of Ohio for permission to publish said reduced rates grew out of the fact that many of the mines in the Ohio No. 8, Middle and Massillon districts were served jointly by the Wheeling & Lake Erie Railway Company and one or more of the petitioners before named, and also out of [fol. 3017] the fact, even where mines were not served jointly by any of the petitioners and the Wheeling & Lake Erie Railway Company, that the competition of operators on your petitioners' lines was so keen as to require the maintenance of the same basis of reduced rates as had been published by the Wheeling & Lake Erie Railway Company under authority of The Public Utilities Commission of Ohio in its Special Permission No. 6492.

Prior to the application of the aforenamed petitioners for permission to reduce their rates from points in the Ohio No. 8 district to the same basis as the rates published by the Wheeling & Lake Erie Railway Company from the same district, the Pittsburgh & West Virginia Railway Company had by similar application to The Public Utilities Commission of Ohio and on account of the same character of competition hereinbefore recited, also made similar application to The Public Utilities Commission of Ohio and were authorized by that Commission to publish reduced rates from the Ohio No. 8 district to the destination points previously mentioned.

III

Your petitioners further respectfully show that in their said original petition and in their supplemental petition dated October 20, 1932, they stated that by its order of September 2, 1932, in a proceeding known as Docket No. 8072 the Public Utilities Commission of Ohio entered upon an inquiry upon its own motion into the rates maintained by The Baltimore and Ohio Railroad Company, The Pennsylvania Railroad Company, The New York Central Railroad Company, Wheeling & Lake Erie Railway Company and the Pittsburgh & West Virginia Railway Company [fol. 3018] for the transportation of bituminous coal from points in the Cambridge, Crooksville and Hocking districts to Cleveland, Lorain, Huron, Akron, Orrville and Rocky River, Ohio, and points intermediate thereto; that following the hearing in said proceeding The Public Utilities Commission of Ohio entered its order on September 15, 1932 requiring The Baltimore and Ohio Railroad Company,

The Pennsylvania Railroad Company, The New York Central Railroad Company and the Wheeling & Lake Erie Railway Company to establish on or before September 30, 1932, upon notice to the Commission and the general public by not less than one day's filing and posting in the manner prescribed by law and thereafter to maintain and apply rates on bituminous coal from the Cambridge, Crooksville and Hocking districts, in the State of Ohio, to Cleveland, Lorain, Huron, Akron, Orrville and Rocky River, Ohio, and points intermediate thereto, which rates from the Cambridge district were required to be not in excess of the rates currently maintained from the Ohio No. 8 district to the same destinations, except that in instances in which there were differences in rates from and to specific points prior to August 1 and September 2, 1932, the same differences might be maintained, and from the Hocking and Crooksville districts to said destinations hereinbefore named rates were required to be published not in excess of the rates currently maintained from the Ohio No. 8 district to said destinations by a greater number of cents per ton than the rates from the Hocking and Crooksville districts prior to said reductions on August 1 and September 2, 1932;

That the said order of The Public Utilities Commission [fol. 3019] of Ohio required substantial reductions in the intrastate rates of the carriers named above on bituminous coal, in carloads, from the Cambridge, Hocking and Crooksville districts to the above named destinations. Said order has been complied with by the above named carriers, and said reduced rates as prescribed by The Public Utilities Commission of Ohio have been established and are now in effect. The following table is illustrative of the reductions in rates resulting from said order, rates being shown in cents per net ton.

	From					
	Cambridge		Hocking		Crooksville	
To	A	B	A	B	A	B
Cleveland	174	145	189	160	176	147
Lorain	174	145	189	160	176	147
Huron	174	145	189	160	176	157
Akron	151	128	189	160	151	128
Orrville	151	122	189	160	139	122
Rocky River	174	145	189	160	189	160

A—Rates in effect prior to August 29th, 1932.
B—Present Rates.

That subsequent to the entering of the order of the Ohio Public Utilities Commission dated September 15, 1932, your petitioners duly filed with the said Ohio Public Utilities Commission their application for rehearing therein, as required by law, on or about the 24th day of September, 1932, which said petition was denied. Thereafter your petitioners filed with the Supreme Court of Ohio an application for a stay of execution of said order and a petition in error seeking to have the said order of The Public Utilities Commission of Ohio vacated and set aside; that your petitioners' said application for a stay of execution of the [fol. 3020] said order of The Public Utilities Commission of Ohio was denied by the Supreme Court of that state.

IV

That, as stated in said supplemental petition, your petitioners showed to your Honorable Commission that on September 22, 1932, The Public Utilities Commission of Ohio, on its own motion, instituted an investigation of the rates on bituminous coal from mines and coal shipping points in the Pomeroy district (as set forth and described in Agent F. V. Davis' Coal Tariff Ohio No. 48, as amended) to Cleveland, Huron, Akron, Orrville and Rocky River, Ohio, and points intermediate thereto; that after hearing therein, by its order dated October 18, 1932, in a proceeding known as Docket No. 8097 The Public Utilities Commission of Ohio required The New York Central Railroad Company and its connecting carriers, as they participate in the traffic, to establish over available routes through nonaffected territory (as defined in Ohio-Michigan Coal Cases, 80 I. C. C. 663) on or before October 28, 1932, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed by law and thereafter to maintain and apply to the transportation of bituminous coal, in carloads, from all mines and coal shipping points on the line of The New York Central Railroad Company in the Pomeroy district of Ohio to said destinations rates not in excess of the rates contemporaneously maintained from the Ohio No. 3 district to the destinations above named by a greater number of cents per net ton than the rates from the Pomeroy district prior to the reductions on August 1 and September 2, 1932, exceeded the rates from the Ohio No. 8 district to the same

[fol. 3021] destinations. The effect of said order was to require substantial reductions in the intrastate rates of The New York Central Railroad Company and its connections on bituminous coal, in carloads, from the Pomeroy district to the above named destinations, the rates to such destinations being reduced from $1.89 to $1.60, a reduction of 29 cents per net ton, except to Huron, where the reduction amounted to 19 cents per ton.

That said order has been fully complied with by the publication of the above-mentioned reductions and such reduced rates are now in effect.

V

That in its original order entered October 3, 1932, instituting this investigation, your Honorable Commission referred in the opening paragraph thereof to orders promulgated by The Public Utilities Commission of Ohio dated June 30, 1932, and July 25, 1932, and in its supplemental order dated October 28, 1932, referred to orders of The Public Utilities Commission of Ohio entered on September 15, 1932, and October 18, 1932. The fourth paragraph of said original and supplemental orders read as follows:

"It is ordered That the Commission, upon its own motion, enter upon an investigation to determine whether the rates on bituminous coal *required* by the Public Utilities Commission of Ohio to be maintained by said railroads cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by petitioners in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist."

[fol. 3022]

VI

That at the hearing on December 5, 1932, at Columbus, Ohio, as assigned by the said supplemental order of your Honorable Commission, certain questions arose as to the

scope of the issues presented under the original and supplemental orders of your Honorable Commission as aforesaid. The Wheeling & Lake Erie Railway Company and certain shipper interests insisted that the original and supplemental orders of your Honorable Commission herein as aforesaid did not embrace the investigation of intrastate rates on bituminous coal from points in the Ohio No. 8, Middle, Massillon, Cambridge, Hocking, Crooksville and Pomeroy districts to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville, Rocky River and intermediate destinations in Northeastern Ohio.

That the original and supplemental petitions definitely referred to and dealt with the rates from the Ohio No. 8, Middle, and Massillon districts to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville, Rocky River, and intermediate destinations in the Northeastern Ohio as well as rates from Cambridge, Hocking, Crooksville and Pomeroy districts to the same destinations, and prayed that the investigation to be instituted by your Honorable Commission as to rates on bituminous coal between points in the State of Ohio should include rates from the origin district to the destinations aforesaid as a part of such investigation. In view, however, of the contentions of the Wheeling & Lake Erie Railway Company and shipper interests and the tentative ruling of the Examiner it is uncertain whether said rates are included in these proceedings.

[fol. 3023] VII

That by order dated July 25, 1932 (Special Permission Docket 6492) the Public Utilities Commission of Ohio authorized and permitted the Wheeling & Lake Erie Railway Company to establish on one day's notice reduced rates on bituminous coal from mines on its lines in the Ohio No. 8, Middle and Massillon Districts to Cleveland, Lorain, Huron and Akron, and intermediate points, on the same or approximately the same basis as the carriers were required to establish by orders of The Public Utilities Commission of Ohio in Docket No. 7252 from Ohio No. 8, Middle and Massillon districts to Canton and Massillon, Ohio.

That by order dated August 30, 1932 (Special Permission Docket 6570) the Public Utilities Commission of Ohio authorized and permitted The Pennsylvania Railroad Com-

pany, The New York Central Railroad Company and The Baltimore and Ohio Railroad Company to establish on one day's notice reduced rates on bituminous coal from mines on their lines in the Ohio No. 8, Middle and Massillon districts to Cleveland, Lorain, Huron, Akron, and intermediate points on the same or approximately the same basis as the said The Public Utilities Commission of Ohio had authorized and permitted the Wheeling & Lake Erie Railway Company to publish under and by virtue of its order in Special Permission Docket 6492 dated July 25, 1932.

That said rates maintained from the Ohio No. 8, Middle and Massillon districts to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville, Rocky River, and intermediate destinations in Northeastern Ohio under and by virtue of orders of The Public Utilities Commission of Ohio in its [fol. 3024] Special Permission Dockets aforesaid were and are maintained in intrastate commerce, subject to the authority of the State of Ohio and were published as authorized or permitted by The Public Utilities Commission of Ohio, over protests and without suspension by the said Commission and that these rates are, to use the language of the Supreme Court of the United States in Florida v. United States, 282 U. S. 194, to be regarded as made by the State of Ohio and subject to the jurisdiction of this Commission under the provisions of Section 13 of the Interstate Commerce Act.

That the matters set forth herein are simply a part of the general situation described in the original and supplemental petitions, and that they should be investigated and considered in connection with the matters covered in the original and supplemental petitions. Your petitioners are particularly anxious to avoid further delay in the hearing on the matters placed in issue by their original and supplemental petitions herein.

That the said rates on bituminous coal from the Ohio No. 8, Middle, Massillon, Cambridge, Hocking, Crooksville and Pomeroy districts to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville and Rocky River and the other destinations hereabove referred to constitute a very important part of the coal rate structure of your petitioners, and that a tremendous volume of coal moves under such rates; that consideration of the said rates and appropriate action by your Honorable Commission in these proceedings with re-

spect to them is essential to proper, complete and definite disposition of the issues sought to be raised by your petitioners herein, and failure to deal with them in the manner [fol. 3025] as prayed by your petitioners will leave the entire situation in a chaotic state, make impossible the removal of the undue prejudice, preference and discrimination against interstate commerce referred to in the original and supplemental petitions herein, and result in the impairment of your petitioners' revenues contrary to the provisions of Section 15a of the Transportation Act.

VIII

That in view of the premises and in order to clarify the orders of this Honorable Commission previously entered herein and to more clearly define the issues involved in this proceeding, petitioners respectfully request that a further supplemental order be entered herein and that said supplemental order, in lieu of paragraphs 2, 3 and 4 of the supplemental order of this Honorable Commission of October 28, 1932, herein shall include the following:

'It further appearing, That by a supplemental petition, dated December 6th, 1932, filed on behalf of common carriers by railroad engaged in the transportation of bituminous coal within the State of Ohio, petitioners therein alleged that certain intrastate rates on bituminous coal from the Ohio No. 8, Middle, Massillon, Cambridge, Hocking, Crooksville and Pomeroy Districts in the State of Ohio to Cleveland, Lorain, Huron, Akron, Canton, Massillon, Orrville, Rocky River and destinations intermediate thereto, now maintained by the Wheeling & Lake Erie Railway Company, The Pittsburgh & West Virginia Railway Company, The Baltimore and Ohio Railroad Company, The New York Central Railroad Company, The Pennsylvania Railroad Company, and their connections, and required, authorized [fol. 3026] or permitted by The Public Utilities Commission of Ohio to take effect over protest and without suspension, are unlawful, in that they cause, and will cause, undue prejudice and preference as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce; and, good cause appearing therefor,

It is ordered, That the Commission, upon its own motion, enter upon a proceeding of inquiry and investigation to determine whether the rates on bituminous coal required, authorized or permitted by The Public Utilities Commission of Ohio to be maintained by said railroads and The Pittsburgh & West Virginia Railway Company, The Wheeling and Lake Erie Railway Company, and their connections from Ohio No. 8, Middle, Massillon, Cambridge, Crooksville, Hocking and Pomeroy districts to destinations in Northeastern Ohio, including Canton, Massillon, Mansfield, Cleveland, Lorain, Huron, Akron, Orrville, Rocky River and intermediate points cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by petitioners and other carriers serving said origin and destination territory, in order to remove such advantage, [fol. 3027] preference, prejudice, or discrimination, if any, as may be found to exist.

IX

That following the discussion and arguments had before the Examiner, your petitioners moved that the hearing in this proceeding be adjourned to December 12, 1932, at Columbus, Ohio, in order, as they stated, to afford your petitioners an opportunity to present this their petition to your Honorable Commission for the purpose of having the issues herein made definite and certain and the orders previously entered herein modified and clarified; that the Examiner inquired of the parties present at the hearing whether there was any objection to the plan of your petitioners for such adjournment and clarification of the issues, and none opposed it or voiced objection to the proposal, whereupon the motion of your petitioners was granted and the hearing continued to December 12th as aforesaid.

Wherefore your petitioners pray that your Honorable Commission modify and clarify its orders of October 3 and 28, 1932, so as to include specifically within the scope of the investigation herein, in addition to the rates already speci-

fically included within its orders previously entered herein, rates of the Wheeling & Lake Erie Railway Company from the Ohio No. 8, Middle, and Massillon districts to Cleveland, Lorain, Huron, Akron, and intermediate points, and the rates of the Pittsburgh & West Virginia Railway Company, the Baltimore and Ohio Railroad Company, the New York Central Railroad Company, the Pennsylvania Railroad Company, and their connections from the same producing groups to the same destinations, and rates of the aforenamed carriers from the Cambridge, Hocking, Crooksville [fol. 3028] and Pomeroy districts to the same destinations, imposed, required, authorized or permitted by orders of The Public Utilities Commission of Ohio—to the end that an order be entered declaring unduly discriminatory, prejudicial and preferential, unjust and unlawful and as creating an undue burden upon interstate commerce the said rates and charges of the Wheeling & Lake Erie Railway Company from the Ohio No. 8 Middle and Massillon districts to Cleveland, Lorain, Huron, Akron, Canton and Massillon, and intermediate points, and that this Commission by its order prohibit such undue discrimination, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and such unlawful burden upon interstate commerce, and prescribe the rates and charges or the maximum or minimum or maximum and minimum rates thereafter to be observed for and in connection with the intrastate transportation of bituminous coal within the State of Ohio, in such manner as, in the Commission's judgment, will remove such advantage, preference, prejudice and discrimination aforesaid.

And your petitioners pray for such other and further general relief in the premises as to your Honorable Commission may seem right and proper.

Respectfully submitted, The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, Erie Railroad Company, The Monongahela Railway Company, The New York Central Railroad Company, The New York, Chi- [fol. 3029] cago and St. Louis Railroad Company, Norfolk & Western Railway Company, The Pennsylvania Railroad Company, Pittsburgh, Chartiers and Youghiogheny Railway Company, The Pitts-

burgh & Lake Erie Railroad Company, Western Maryland Railway Company, The Virginian Railway Company, by Roy S. Kern, Agent for the Above Named Petitioners, Wabash Building, Pittsburgh, Pa.; Charles R. Webber, Baltimore and Ohio Bldg., Baltimore, Md.; M. Carter Hall, 823 E. Main St., Richmond, Va.; Marion B. Pierce, Midland Bldg., Cleveland, O.; Leo P. Lay, LaSalle Street Station, Chicago, Ill.; William J. Stevenson, Terminal Tower, Cleveland, O.; D. Lynch Younger, Transportation Bldg., Washington, D. C.; Guernsey Orcutt, 925 Pennsylvania Station, Pittsburgh, Pa.; E. S. Williams, Continental Trust Bldg., Baltimore, Md.; Fred N. Oliver, John C. Donnally, Mills Bldg., Washington, D. C., Attorneys for Petitioners.

December 6, 1932.

[fol. 3030] BEFORE INTERSTATE COMMERCE COMMISSION

No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

ORDER—Nov. 26, 1932

Upon consideration of the record in the above-entitled proceeding, and of petition of Toledo Chamber of Commerce asking that the issues in this proceeding be broadened:

It is ordered, That said petition be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3031] BEFORE INTERSTATE COMMERCE COMMISSION

No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

ORDER—Feb. 28, 1933

It appearing, That at the hearing in the above-entitled proceeding on February 7, 1933, E. S. Ballard, Attorney for

Eastern Ohio Coal Operators' Association et al., parties hereto, made a motion for postponement of the hearing herein for at least four weeks and that the presiding examiner overruled said motion;

It further appearing, That Mr. Ballard thereupon requested that the merits of said ruling be submitted to the Commission for its consideration, and the Commission having duly considered the matter:

It is ordered, That the examiner's ruling denying said motion be, and it is hereby, sustained.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3032] PETITIONERS' EXHIBIT No. 2

Interstate Commerce Commission, Washington

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Protest and application of the Wheeling & Lake Erie Railway Company filed August 13, 1932,

Protest and petition of certain carriers in Central Freight Association filed August 15, 1932,

Answer of the Pittsburgh & West Virginia Railway Company filed August 24, 1932,

Protest and application in behalf of Eastern Ohio Coal Operators' Association filed August 26, 1932,

Answer of the Pittsburgh & West Virginia Railway Company filed September 2, 1932,

Order of the Commission entered September 8, 1932,

Petition for reconsideration and cancellation of order of suspension filed September 16, 1932,

Communication dated Washington, D. C., September 17, 1932, addressed to Hon. George B. McGinty, Secretary, Interstate Commerce Commission, signed August G. Gutheim, Attorney for Western Pennsylvania Coal Traffic Bureau,

Petition of the Pittsburgh & West Virginia Railway Company filed September 17, 1932,

Answer of Protestant carriers filed September 27, 1932,
Order of the Commission entered October 3, 1932, and
Transcript of the stenographer's notes of the hearing held at Washington, D. C., October 4, 1932, before Examiner Weems

in Investigation and Suspension Docket No. 3801, Coal from Pennsylvania to Northern Ohio, the originals of which are now on file and of record in the office of this Commission.

[fol. 3033] I do further certify that the papers and documents above referred to constitute a true copy of the record (except correspondence) in Investigation and Suspension Docket No. 3801, Coal from Pennsylvania to Northern Ohio, as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A.D. 1933. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3034] BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of SUPPLEMENT No. 40 TO THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY'S TARIFF I. C. C. No. 225.

PROTEST AND APPLICATION OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY FOR SUSPENSION OF PROPOSED REDUCED RATES ON BITUMINOUS COAL, CARLOADS—FILED AUG. 13, '32.

The Wheeling and Lake Erie Railway Company (hereinafter referred to as the Wheeling) hereby protests against the proposed reduced rates on bituminous coal named in Supplement No. 40 to The Pittsburgh & West Virginia Railway Company's tariff I. C. C. No. 225 from mines on the lines of the Pittsburgh & West Virginia Railway in the Pittsburgh district to points on the lines of the Wheeling and of The Lorain & West Virginia Railway Company in northeastern Ohio, published to become effec-

tive September 9, 1932, and hereby petitions the Commission to suspend and cancel permanently the rates named in said Supplement; and in support of this protest and application respectfully shows:

(1) The Wheeling is a corporation organized and existing under the laws of the State of Ohio, and is a common carrier engaged in the transportation of persons and property in interstate commerce and in intrastate commerce within the State of Ohio, and is subject to the Interstate Commerce Act.

(2) The Wheeling serves a considerable number of coal mines situated in the Ohio, No. 8, Middle and Massillon districts of the State of Ohio. It connects with the line of the Pittsburgh & West Virginia Railway at Pittsburgh Junction, Ohio, and as a delivering and intermediate line transports a considerable volume of coal from mines on [fol. 3035] the lines of the Pittsburgh & West Virginia Railway in the Pittsburgh district of Pennsylvania, and in the Ohio No. 8 district to points on or beyond the lines of the Wheeling.

(3) On or about August 4, 1932, the Wheeling received unofficial advice that The Pittsburgh & West Virginia Railway Company proposed to publish reduced rates on bituminous coal from mines on its lines in the Pittsburgh district to points on the lines of the Wheeling and to points on the line of its subsidiary, The Lorain & West Virginia Railway Company. Whereupon the Wheeling promptly advised The Pittsburgh & West Virginia Railway Company by telegram and letter that it would not concur in the publication of such reduced rates. Nevertheless, without further notice to the Wheeling, The Pittsburgh & West Virginia Railway Company as of August 9, 1932, filed its Supplement No. 40 to its tariff I. C. C. No. 225 naming such reduced rates effective September 9, 1932, and filed its Sixth Section Application to advance the effective date of said rates.

(4) The position of the Wheeling is that it does not desire or propose voluntarily to become a party to the reduction of interstate rates on bituminous coal to points on or beyond its lines in the state of Ohio. It alleges that The Pittsburgh & West Virginia Railway Company is with-

out power to use the Wheeling's concurrence for the publication of such reduced rates over the prior protest and objection of the Wheeling, and that the joint rates published by The Pittsburgh & West Virginia Railway Company to points on or beyond the lines of the Wheeling are, therefore, not lawful rates and should not be permitted to become effective.

[fol. 3036] (5) Contemporaneously herewith the Wheeling is filing with the Interstate Commerce Commission a protest against the making effective of said rates on short notice, in order to prevent said rates becoming effective before due consideration can be given by the Commission to this application and other applications which may be filed for the suspension thereof.

Wherefore, the Wheeling respectfully prays that the Commission suspend the operation of the proposed rates named in Supplement No. 40 to The Pittsburgh and West Virginia Railway Company's tariff I. C. C. No. 225, and enter upon an investigation of the lawfulness of said proposed rates, and thereafter permanently cancel same.

Respectfully submitted, The Wheeling and Lake Erie Railway Company, by Geo. Durham, Vice President and General Manager.

August 11, 1932.

626 Huron Road, Cleveland, Ohio.

[fol. 3037] BEFORE INTERSTATE COMMERCE COMMISSION

In the Matter of PITTSBURGH & WEST VIRGINIA RAILWAY SUPPLEMENT 40 TO FREIGHT TARIFF F 287 I. C. C. 225.

PROTEST AND PETITION OF CERTAIN CARRIERS IN CENTRAL FREIGHT ASSOCIATION FOR SUSPENSION—Filed Aug. 15, '32.

Come now—

The Baltimore & Ohio Railroad Company
The Chesapeake & Ohio Railway Company
Erie Railroad Company
Louisville & Nashville Railroad Company
The Michigan Central Railroad Company
(The New York Central Railroad Co Lessee)
The New York Central Railroad Company

The New York, Chicago & St. Louis Railroad Company
Norfolk & Western Railway Company
The Pennsylvania Railroad Company
Pere Marquette Railway Company
The Pittsburgh and Lake Erie Railroad Company
Western Maryland Railway Company

carriers in Central Freight Association territory and by and through Roy S Kern, Agent, for in behalf of each of them, and protest against Supplement 40 to Pittsburgh & West Virginia Railway Company joint and proportional Freight Tariff F 287 I. C. C. 225 published to become effective September 9, 1932, which names rates on bituminous coal, carloads, from mines and stations on the Pittsburgh & West Virginia Railway Company in Groups A and B as defined in said tariff which comprises the Pittsburgh Coal Producing District on that line to stations on the Lorain & West Virginia Railway and Wheeling & Lake Erie Railway, Lorain and Cleveland, Ohio, $1.55 per net ton and Huron, Ohio, $1.65 per net ton and stations on the said Lorain & West Virginia Railway Company and Wheeling & Lake Erie Railway Company intermediate to Lorain, Cleveland and Huron, Ohio, including Massillon, Ohio, and hereby petition the Commission to suspend and cancel the said rates and in support of their protest and petition respectfully show the following:

I

Petitioners are common carriers of freight in Central Freight Association Territory, are subject to the Interstate Commerce Act, and as such are vitally interested in, and for a large portion of their revenues are dependent upon the transportation of Bituminous Coal.

II

Bituminous Coal is produced at various points in C. F. A. and contiguous territories served by protesting carriers, and such Bituminous Coal is marketed for steam, metallurgical and domestic purposes, generally throughout C. F. A. territory, to which markets it is naturally con- [fol. 3038] tiguous and is transported by protestants upon freight rates the same as/or related to the rates now applicable from the said mines and stations on the Pittsburgh

& West Virginia Railway Company in the Pittsburgh District.

III

Protestants also participate in the transportation of large volumes of Bituminous Coal from various Bituminous Coal Districts in Official Territory to Lake Erie Ports for trans-shipment by water.

IV

There is attached hereto, and made a part hereof, a statement marked Appendix A showing the rates proposed by the Pittsburgh & West Virginia Railway Company of which suspension is here sought and applicable — charges as named in Pittsburgh & West Virginia Railway Company Joint and Proportional Freight Tariff F 287 I. C. C. 225 as amended and the difference between such charges which indicate the amounts of the proposed rate reductions here protested against. If the proposed rates are permitted to become effective they will result in undue prejudice to patrons of these protestants and undue preference of the patrons of the Pittsburgh & West Virginia Railway and these protestants should not be placed in the position of being compelled to reduce their rates which are in all respects just, reasonable and otherwise lawful rates, in order to enable them to compete with the Pittsburgh & West Virginia Railway for the transportation of this important traffic. Protestants aver that the attached statement shows on its face the serious nature of the reductions proposed and that because of the keen competition existing between coals produced on their rails in the same or rate related districts and coals produced on the Pittsburgh & West Virginia Railway Company in the Pittsburgh District will divert large tonnages to their substantial and irreparable damage. Unless suspension hereby requested be made and the proposed reductions investigated to the end that the existing reasonable rates may be continued in effect these respondents may be compelled to meet the competitive situation by equal or corresponding reductions in their rates with the result that they will be subjected to a diminution and impairment of their revenues already inadequate, contrary to their rights under the Act to regulate commerce.

Protestants aver and verily believe that the existing rates from the Pittsburgh and related coal originating districts, as well as rates from other coal producing districts which will necessarily be affected by the reductions proposed, are not in excess of reasonable maximum charges and in support thereof respectfully call attention to the decisions and orders of the Commission in Investigation and Suspension Docket 774, Bituminous Coal to Central Freight Association Territory, 46 I. C. C. 66, where at Page 81 the Commission recognized the Pittsburgh District to Cleveland rate as the basis for the Hocking District to Toledo rate which formed the foundation upon which the rate structure therein approved to affected territory rested; Canton Chamber of Commerce vs. P. R. R., Director General as Agent, et al, 56 I. C. C. 293, where the Commission prescribed non-prejudicial and non-discriminatory rates from the Pittsburgh District to Canton, Ohio; and Youngstown Sheet & Tube Company vs P. & L. E. R. R., et al, 29 I. C. C. 428, where the Commission prescribed reasonable rates from the Pittsburgh District [fol. 3039] to Youngstown, Ohio, which were subsequently recognized in I. & S. 774 Supra as the key rate to the adjustment obtaining from the Pittsburgh, Connellsville and Fairmont Districts to destinations in Ohio East of affected territory including Lorain, Cleveland, Huron, Canton and Massillon. The rate structure from the origin districts in Official Classification territory to C. F. A. affected territory with which the rates from the Pittsburgh and related districts to Cleveland, Lorain, Huron, Canton and Massillon are associated have been, since I. & S. 774, approved by the Commission in Ohio-Michigan Coal Cases 80 I. C. C. 663 and in part in Indiana State Chamber of Commerce vs. B. & O. R. R., et al, 83 I. C. C. 591; Indiana State Chamber of Commerce vs. A. A. R. R., et al, 115 I. C. C. 650; Kalamazoo Chamber of Commerce, et al, vs. C. & O. Ry., et al, 107 I. C. C. 291, and in several other cases. They have also been declared by the Commission to be less than reasonable maximum rates.

V

Respondents submit that the brief explanation of the C. F. A. Coal Rate structure which is so largely the result of decisions and orders of the Commission clearly and convincingly denotes that the reductions proposed in the

tariff here protested cannot and will not be confined either to the origin district or districts directly affected thereby or to destinations on the W. & L. E. Ry. and the Lorain & West Virginia Railway named in the said schedule but, because of recognized rate relationships and competitive influences, will promptly or ultimately lead to the reduction of rates from all bituminous coal producing districts in Official Classification territory to all of Central Freight Association Territory commonly termed "affected territory" and "non-affected territory" and east thereof to and including the Niagara Frontier involving an annual tonnage aggregating about 100,000,000 tons.

VI

In addition to the foregoing, protestant carriers submit that the proposed rates for the transportation of bituminous coal from the said origins on the Pittsburgh & West Virginia Railway Company to the destinations stated in the tariff herein cited and listed in Appendix A attached are per se unreasonably low and depressed, unduly preferential and prejudicial and threaten the destruction of protestants' traffic and earnings. The said rates are lower both absolutely and relatively than bituminous coal rates for corresponding distances in C. F. A. Territory as prescribed or approved by the Commission in the cases cited in Paragraph IV hereof. That considering the transportation service performed they are lower than rates prescribed by the Commission—Lake Cargo Coal Rates 1925, 126 I. C. C. 309—for application on bituminous coal to Lake Erie Ports for trans-shipment beyond as cargo.

VII

By reason of the foregoing, protestants formally assert that the subnormal and unduly depressed proposed rates, if permitted to become effective, will react with serious consequences on the carriers in C. F. A. Territory and on producers of coal not served by the Pittsburgh & West Virginia Railway through a displacement of coal tonnage now produced and handled by such shippers and railroads by tonnage moving on the unlawfully low and preferential rates here protested against. As is well set forth by the Federal Courts in its dicision Jefferson Island Salt Mining Co. vs. U. S., 6 Fed. 2nd 315 the Commission's jurisdic-

tion in respect to the reasonableness of rates extends "to the wider relations necessary to grant relief".

[fol. 3040] This same principle is subscribed to by the United States Supreme Court in U. S. vs. I. C. R. R. 263 U. S. 515, 525, wherein it is stated that, "the newly conferred power to grant relief against rates unreasonably low may afford protection against injurious rate policies of a competitor which were heretofore uncontrollable".

Wherefore, petitioners respectfully pray that the Commission suspend the operation of the proposed reduced rates as named in Supplement 40 to Pittsburgh & West Virginia Ry. Company's Joint and Proportional Freight Tariff F. 287 I. C. C. 225 and enter into an investigation upon the lawfulness of said tariff and thereafter permanently cancel it.

Respectfully submitted, Roy S. Kern, for Said Protestants Hereinbefore Named.

Aug. 12, 1932

836 Wabash Building, Pittsburgh, Penna.

[fol. 3041]

Appendix "A"

Index No.	To L. & W. V. Ry. Station	Present (P. & W. V. I. C. C. 225) (Cents per 2000 lbs.)	Proposed (Supp 40 to P. & W. V. I. C. C. 225) (Cents per 2000 lbs.)	Proposed Reduction (Cents per 2000 lbs.)
3950	Pitts	184	155	29
3951	Quarry Junction	184	155	29
3953	South Lorain	184	155	29
3955	Lorain, W.&L.E.Ry.	184	155	29
6929	Bowerstown to	159	155	04
6938	Massillon			
6939	Dalton	172	155	17
6940	Orrville			
6941	Smithville	181	155	26
6942	Creston to	184	155	29
6947	Wellington			
6948	Brighton to	184	165	19
6952	Milan			
6967	Cleveland to	184	155	29
6975	Moran			
6976	Kent to	172	155	17
6983	Middle Branch			
6984	Waco to	159	155	04
6990	Harmon			
7007	East Canton to	159	155	04
7014	Dell Roy			

[fol. 3042] BEFORE THE INTERSTATE COMMERCE COMMISSION

In the Matter of PITTSBURGH & WEST VIRGINIA RAILWAY SUPPLEMENT 40 TO FREIGHT TARIFF F 287 I. C. C. 225.

ANSWER OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY TO THE PROTEST AND PETITION OF CERTAIN CARRIERS IN CENTRAL FREIGHT ASSOCIATION FOR SUSPENSION—Filed Aug. 24, '32.

Comes now The Pittsburgh & West Virginia Railway Company, hereinafter termed "Respondent", and in answer to the joint protest of the Baltimore & Ohio Railroad, New York Central Railroad, Pennsylvania Railroad and other carriers named in protest dated August 12, 1932, and signed by Roy S. Kern, Agent for said Protestants, respectfully shows:

I

Respondent admits the allegations of paragraph I, page 1.

II

Respondent admits the allegations of paragraph II, page 1.

III

Respondent admits the allegations of Paragraph III, page 1.

IV

Respondent admits the allegations contained in the first sentence of paragraph IV, page 2.

In answer to the allegations contained in the second, third, and fourth sentences of paragraph IV, page 2, respondent denies that the proposed Pittsburgh district rates [fol. 3043] will result in undue prejudice to protestant's shippers, and undue preference to Pittsburgh & West Virginia Railway shippers, for the reason that respondent does not participate in joint rates to Cleveland, Lorain and Huron published by any of the protestant carriers, other than the Western Maryland Railway and the joint rates published by the Western Maryland Railway via respondent's line to Cleveland, Lorain and Huron are in no way related to respondent's rates from the Pittsburgh district.

On the other hand, respondent avers that the intentional

refusal of protestants to maintain the long established and existing differential of 10 cents, Pittsburgh over northern Ohio districts (See Appendix A) referred to with approval by the Commission in Ohio-Michigan Coal Cases, 80 I. C. C. 663, at page 689, by reducing their Pittsburgh District rates corresponding to the reductions in their northern Ohio rates, will result in undue prejudice to and unjust discrimination against their Pittsburgh district shippers, Pennsylvania and West Virginia localities and Pennsylvania and West Virginia coal, and in undue preference to and unjust discrimination in favor of their northern Ohio shippers, Ohio localities and Ohio coal, and any loss of tonnage or any diminution of revenues beyond that brought about by the rate reduction will be chargeable to protestants' failure to maintain the integrity of their existing Cleveland, Lorain and Huron rate structure long applicable from the Pittsburgh and northern Ohio districts, and disrupted by their own acts of reducing their northern Ohio district rates without correspondingly reducing their Pittsburgh district rates.

Where, as in this case, a fixed relationship of 10 cents per ton has for many years and now exists between the Pittsburgh and northern Ohio rates to Cleveland, Lorain and Huron, it is well established law that protestants can- [fol. 3044] not lawfully place their northern Ohio shippers in competition with Wheeling and Lake Erie northern Ohio shippers, without at the same time placing their Pittsburgh district shippers in competition with Wheeling and Lake Erie shippers. Pittsburgh district shippers are just as much in competition with Wheeling and Lake Erie northern Ohio shippers as are northern Ohio shippers served by protestants. They are lawfully entitled to equality of treatment, and the failure of protestants to accord their Pittsburgh district shippers equality of treatment violates not only Section 3, but also Section 2 of the Act, where, as in this case, the unequal treatment is intentional and deliberate.

Respondent, in reducing its Pittsburgh district rates corresponding to the reductions made in its Ohio No. 8 rates to meet the Wheeling and Lake Erie Ohio No. 8 competition has accorded its Ohio No. 8 and Pittsburgh district shippers the equal treatment the law commands, and its action is justly entitled to the approval of the Commission.

Respondent refers to the following decisions of the Commission, among others, in support of its position.

"Carriers may create and meet competitive conditions which could not be required under the act, subject to the limitations that unjust discrimination shall not be caused thereby." Bunker Hill & Sullivan Mining & Concentrating Co. v. Oregon-Washington R. & Nav. Co., 132 I. C. C. 266, and cases cited in 2 I. C. A. Anno. 1174.

"A carrier can not compete at one point and decline to compete at another where conditions are the same." Proportional Rates to Ohio River Crossings, 43 I. C. C. 458, and cases cited in 2 I. C. A. Anno. 1174.

"It is no defense to a charge of undue prejudice against one point in favor of another to urge that competition exists at the favored points when similar conditions obtain at the point discriminated against." Mayor and Council of Boston, Ga., v. Atlantic Coast Line R. Co., 24 I. C. C. 50, and cases cited in 2 I. C. A. Anno. 1174.

[fol. 3045] "A marked change in a long-existing rate relationship in favor of competing industries can not be made without an attendant presumption of undue discrimination." Detroit Chemical Works v. Northern Central Ry. Co., 13 I. C. C. 357.

"Competition at one point does not justify discrimination against another at which similar competition exists." North Fork Cannel Coal Co. v. Ann Arbor R. Co., 25 I. C. C. 241.

"If a railway adjusts its rates on different divisions so as to divert to one locality business which would naturally go to another, such preference is not excused because some of such charges are not entirely voluntary, but result from competition of carriers." Raymond v. Chicago, M. & St. P. Ry. Co., 1 I. C. C. 2301, 2 I. C. A. Anno. 1172.

Whereas in this case two coal districts have for years been allied into practically one group by a fixed differential of 10c, the carriers serving the group as a whole can not lawfully reduce the rates from the lower-rated portion of the group, in this case the northern Ohio district, without correspondingly reducing the rates from the higher-rated portion of the group, in this case the Pittsburgh district. The Commission has invariably from the very first ruled against such a practice.

In answer to the allegations contained in the fifth and sixth sentences of paragraph IV, pages 2 and 3, respondent does not here claim that the present rates are in excess of reasonable maximum charges. The rates are of long standing and only a full investigation can determine that question. Respondent emphatically denies the statement contained in this paragraph that the Commission recognized the Pittsburgh district rate to Cleveland as a basis for the Hocking district rate to Toledo, which formed the foundation of the coal rate structure from the Ohio, Pittsburgh, West Virginia, and Kentucky districts to so-called affected territory. By referring to I. & S. Docket 774, 46 I. C. C. 66, at page 82, it will be seen that the Commission distinctly found that the Ohio-Toledo, and not the Pittsburgh-Cleveland rate, controlled the Central Freight Association general coal rate [fol. 3046] structure. There never has been any relationship between the Pittsburgh to Cleveland and the Hocking to Toledo rates. At one time years ago the rates happened to be the same. Today, the rates are quite different.

None of the cases cited by protestants in this, paragraph IV, are in any way persuasive of the unreasonableness of respondent's proposed rates of $1.55 to Cleveland and Lorain, and $1.65 to Huron from its Pittsburgh district.

I. & S. 774 involved the relationship of rates to so-called C. F. A. "affected territory" and did not involve the Cleveland, Lorain and Huron rates from the Pittsburgh district.

56 I. C. C. 293 involved Section 3 and not Section 1.

In 29 I. C. C. 428 the Commission approved a 70c rate from the Pittsburgh district to Youngstown.

In 80 I. C. C. 663, the Commission approved the existing 10c differential Pittsburgh over Ohio No. 8 to Cleveland, the very differential respondent is now seeking to maintain.

83 I. C. C. 591 concerned rates to the C. F. A. "affected territory in Indiana" and did not concern Cleveland, Lorain and Huron rates in "non-affected territory."

115 I. C. C. 650 concerned rates to Indiana points in C. F. A. "affected territory," and did not concern rates from the Pittsburgh district to Cleveland, Lorain and Huron in "non-affected territory."

107 I. C. C. 291 concerned rates to Michigan points in C. F. A. "affected territory," and did not concern rates from the Pittsburgh district to Cleveland, Lorain and Huron in "non-affected territory."

In none of the cases cited in this paragraph, or in any other case, has the Commission ever passed upon the per se rea- [fol. 3047] sonableness of the Pittsburgh to Cleveland, Lorain and Huron rates, and the last sentence of this paragraph IV, to the effect that the existing rates have been declared by the Commission to be less than reasonable maximum rates is unsupported by citation, and is erroneous.

V.

In answer to the allegations contained in paragraph V, page 3, respondent denies that the proposed reductions in its Cleveland, Lorain and Huron rates from the Pittsburgh district will in any way affect the rates from the Pittsburgh or related districts to C. F. A. "affected territory." There has never been any relationship between the rates from the Pittsburgh district to the "affected territory," and the rates from the Pittsburgh district to the "non-affected territory," as is clearly shown in I. & S. Docket 774, 46 I. C. C. 66, and in Ohio-Michigan Coal Cases, 80 I. C. C. 663.

In respect of the effect of the reduced rates from the Pittsburgh district to Cleveland, Lorain and Huron upon the rates from the Pittsburgh district to other points in "non-affected territory," respondent avers that Cleveland, Lorain and Huron are the only three points in northern Ohio where a fixed rate relationship exists between the Pittsburgh and Ohio No. 8 rates; and its proposed reduced rates from the Pittsburgh district will have no more effect on the rates from the Pittsburgh district to the Niagara Frontier and other points in "non-affected territory" than will have the reduced rates from Ohio No. 8, Middle and Massillon districts published by protestants and the Wheeling and Lake Erie Railway.

In respect of the effect of reducing the Pittsburgh rates upon the interstate rates from other districts, respondent calls particular attention to the fact that the only producing districts having Cleveland, Lorain and Huron rates differentially related to the Pittsburgh rates, are the Ohio No. 8 and Connellsville district, as will be seen by reference to [fol. 3048] I. & S. Docket 774, 46 I. C. C. 66, at pages 3, 145-6, and Ohio-Michigan Coal Cases, 80 I. C. C. 663, at page 689. So that even should protestants publish the reduced rates to Cleveland, Lorain and Huron from the Pittsburgh district,

as they have from their Ohio No. 8 district, such reduced rates need not in any event extend beyond the Connellsville district.

VI

In answer to the allegations contained in paragraph VI, page 3, respondent denies that the proposed rates of $1.55 to Cleveland and Lorain, and $1.65 to Huron from its Pittsburgh district are unreasonably low and depressed. On the contrary, as is shown below, respondent avers that its proposed rates are substantially higher than reasonable minimum rates. Respondent denies that its proposed rates will result in undue prejudice and preference. As shown in the answer to the allegations contained in paragraph IV, the proposed rates are not unduly prejudicial and preferential, but on the contrary undue preference and prejudice can be avoided only by the maintenance of the existing differential through the publication of respondent's proposed rates.

Respondent denies that the proposed rates threaten the destruction of protestant's traffic and earnings. On the contrary, protestants, by their own act of publishing the reduced rates from their Ohio No. 8, Middle and Massillon districts, have protected their traffic, and any loss in revenue brought about by the reduction in rates is attributable to their own acts in reducing their Ohio rates, and not to the act of respondent in protecting itself and its Pittsburgh shippers by preserving the existing differential.

Respondent denies that the proposed rates are lower both absolutely and relatively than the bituminous coal rates for corresponding distances in C. F. A. territory. On the contrary, respondent avers that its proposed rates from the [fol. 3049] Pittsburgh district of $1.55 to Cleveland and Lorain, and $1.65 to Huron, are reasonable rates, yielding as they do 1.09c per ton per mile for an average haul of 142.2 miles to the Cleveland-Lorain group, and 1.06c per ton per mile for the average haul of 155.8 miles to the Huron group. That respondent's rates are reasonable and even higher rather than lower than other C. F. A. rates is conclusively demonstrated by the rates recently prescribed by this Commission in Coal Trade Assn. of Indiana vs. B. & O. R. R., et al., Docket No. 23922, where the Commission prescribed a scale of rates in C. F. A. territory, which included a rate

of $1.55 per net ton for hauls of 160 miles. These rates were prescribed by the Commission as reasonable maximum rates and yield lower ton mile earnings than do respondent's proposed rates from the Pittsburgh district to Cleveland, Lorain and Huron.

In I. & S. Docket 774, 46 I. C. C. 66, at page 137, the distance from the Connellsville district to Youngstown, Ohio, is shown as 137 miles. The present rate from the Connellsville district to Youngstown, Ohio, is $1.42 per net ton, and based on the average distance of 137 miles, produces 1.04c per ton mile.

The Youngstown rates are published as reasonable rates by the three principal protestants serving the Pittsburgh district, viz., Baltimore and Ohio, Pittsburgh & Lake Erie, and Pennsylvania Railroad, and it is impossible to understand how protestants can contend that the respondent's proposed rates to Cleveland, Lorain and Huron are unreasonably low, while voluntarily maintaining lower rates as reasonable maximum rates for comparable hauls in the same territory. They evidently overlooked their own rates.

Moreover, it is to be noted that the maximum reasonable rate prescribed by the Commission in Coal Trade Association Case, supra, for a 137 mile haul—the Connellsville to [fol. 3050] Youngstown haul—is $1.45, which argues that the rate of $1.42 per ton published by the three principal protestants from Connellsville to Youngstown is a reasonable maximum, and not a reasonable minimum rate.

In I. & S. Docket 3619, decided recently, the Commission fixed a rate of $1.27 per net ton from Mingo Junction and Martins Ferry, Ohio, to Cleveland, Ohio, for an average haul of 150 miles, which again argues that protestants' proposed rates from the Pittsburgh district are perfectly reasonable from the standpoint of per se reasonableness.

Lastly, respondent denies that considering the transportation service performed, respondent's proposed rates from the Pittsburgh district of $1.55 to Cleveland and Lorain and $1.65 to Huron are lower than the Lake Cargo Coal rate of $1.46 from the Pittsburgh district to the same points, prescribed by the Commission in Lake Cargo Coal Rates 1925, 126 I. C. C. 309. But even were that true, emphatically denied by respondent, still the Commission said in Lake Cargo Coal Rates 1925, 101 I. C. C. 513, at page 518, that—

"It is clear that distance and transportation conditions have had little or no consideration in the fixing of the rate structure on lake cargo coal. Other considerations such as the difference in the kind and quality of the coal, market and commercial conditions and competition between the carriers have had a controlling influence in determining the measure and relationship of these rates."

Moreover, the proposed rates from the Pittsburgh district are 9c to Cleveland and Lorain, and 19c to Huron higher than the Lake Cargo Coal rates from the Pittsburgh district, whereas protestants' reduced rates from the Ohio No. 8 district to Cleveland and Lorain are only 2c and to Huron 12c higher than their Lake Cargo Coal rates.

[fol. 3051] VII

In answer to the allegations contained in paragraph VII, pages 3 and 4, respondent denies that its proposed rates from the Pittsburgh district will necessarily displace coal tonnage now produced and handled by protestants' district shippers and railroads.

Respondent admits that the reduced rates from their northern Ohio districts to Cleveland and Lorain of $1.45 and to Huron of $1.55 published by protestants and the Wheeling and Lake Erie Railway, which have the effect of increasing the fixed differential from 10c to 39c, will effect the displacement of a very large volume of Cleveland, Lorain and Huron coal unless Pittsburgh district carriers correspondingly reduce their Pittsburgh district rates to the three points named, and respondent in preserving its Pittsburgh differential of 10 cents by a reduction in its Pittsburgh district rates corresponding to the reduction made by protestants and the Wheeling and Lake Erie Railway in their Ohio No. 8 rates is protecting a large volume of tonnage to Cleveland, Lorain and Huron produced and shipped from its own mines in the Pittsburgh district prior to August 1st, which tonnage but for the reduction in its rates will unquestionably shift to the Ohio No. 8 mines of protestants and Wheeling and Lake Erie. The Wheeling and Lake Erie Railway's reduced rates from their Ohio No. 8 mines to Cleveland, Lorain and Huron went into effect August 1st. Inquiry among respondent's Pittsburgh shippers develops

the fact that practically no Cleveland, Lorain or Huron coal has moved from respondent's mines since August 1st, Cleveland purchasers having informed Pittsburgh & West Virginia operators that they would withhold shipments until September 9th, the date respondent's Pittsburgh district reduced rates are published to go into effect, and that should the Commission suspend the tariff they will discontinue the purchase of Pittsburgh coal, and thereafter purchase Ohio No. 8 coal. In that event with the reduced rates in effect [fol. 3052] from their own Ohio No. 8 mines, much of this coal formerly purchased at respondent's Pittsburgh district mines would necessarily be purchased at protestants' Ohio No. 8 mines.

Respondent admits that if protestants do not reduce their Pittsburgh district rates corresponding to the reductions in respondent's Pittsburgh district rates and their own northern Ohio rates some tonnage now moving from protestants' mines will shift to respondent's mines; but respondent's Pittsburgh district mines are so few in number and so limited in their aggregate capacity that at most they could supply but a small part of the large volume of Cleveland, Lorain and Huron tonnage now moving from protestants' Pittsburgh mines, and the great bulk of the tonnage would necessarily have to be supplied by protestants and Wheeling and Lake Erie northern Ohio mines.

Protestants' position is both selfish and illogical. They would have it that having reduced their own northern Ohio rates to meet Wheeling and Lake Erie northern Ohio competition, respondent should not be permitted by the Commission by correspondingly reducing its Pittsburgh district rates to meet protestants' and Wheeling and Lake Erie competition. Protestants well know that respondent's situation entirely differs from their situations. Each protestant serves large areas, with many mines in the Ohio No. 8 and other northern Ohio districts, taking the reduced rates, while respondent serves but three mines of small capacity in the Ohio No. 8 district, shipping a negligible quantity of coal to Cleveland, Lorain and Huron, approximately 95 per cent of respondent's Cleveland, Lorain and Huron coal coming from its Pittsburgh district mines. Thus by reducing their northern Ohio rates protestants protect their Cleveland, Lorain and Huron tonnage, at least to a

very large extent, for in their case the increase in the differential from 10c to 39c will operate merely to shift protestants' Cleveland, Lorain and Huron tonnage from their [fol. 3053] Pittsburgh to their northern Ohio mines, whereas, with its tariff suspended, respondent's Pittsburgh tonnage must necessarily shift to northern Ohio mines and largely to protestants' mines. Protestants would actually lose no tonnage. They would merely receive less per ton for their hauls. That is all, and it is all but a conclusive presumption that if protestants are successful in inducing the Commission to suspend respondent's tariff, protestants will make up the loss in revenue due to the reduction in their northern Ohio rates, at least in large part, by the increased revenue they would obtain from new Pittsburgh district tonnage diverted from mines on respondent's line to mines on their lines in the northern Ohio districts.

What protestants hope to gain after reducing their northern Ohio rates without correspondingly reducing their Pittsburgh rates by securing a suspension of respondent's tariff is difficult to see, unless it be respondent's Pittsburgh tonnage, for admitting that the increase in the differential from 10c to 39c will divert a tremendous volume of Cleveland, Lorain and Huron coal from Pittsburgh district mines to northern Ohio mines, protestants by correspondingly reducing their Pittsburgh district rates would not only retain their Pittsburgh tonnage for their Pittsburgh lines, but would secure 10 cents additional per ton from the 10 cent differential Pittsburgh over Ohio.

Respondent respectfully submits that having reduced their northern Ohio rates to protect their Ohio shippers and themselves against Wheeling and Lake Erie competition, protestants are in duty bound to protect their Pittsburgh district shippers, Pennsylvania and West Virginia localities and Pennsylvania and West Virginia coal against Ohio competition, created partly by their own acts in reducing their own northern Ohio rates, and partly by the act of the Wheeling and Lake Erie, by correspondingly reducing their [fol. 3054] Pittsburgh rates just as respondent has done. After reducing their Ohio rates no other course is possible under the Interstate Commerce Act and protestants are foreclosed from objecting to respondent's meeting Wheeling and Lake Erie and protestants' northern Ohio competition,

by reducing respondent's Pittsburgh district rates, the only way respondent can meet this competition.

VIII

Respondent respectfully submits that in reducing its Pittsburgh district rates to Cleveland, Lorain and Huron, to thereby preserve the 10c differential Pittsburgh over northern Ohio, which for many years has existed until the Wheeling and Lake Erie, effective August 1st, last, reduced its Ohio rates and thereby increased the Cleveland and Lorain differential in favor of northern Ohio from 10c to 39c, and the Huron differential from 10c to 29c, respondent has merely protected itself and its Pittsburgh District shippers against a situation created by the arbitrary, unnecessary and unwarranted action of the Wheeling and Lake Erie Railway. Respondent has been careful to go no further than necessary to meet the Wheeling and Lake Erie competition by limiting its tariff to expire with August 1st, 1933, the date of expiration of the Wheeling and Lake Erie tariff.

While the Wheeling and Lake Erie's action is to be deplored in this time of distress when the railroads urgently need all the revenues they can possibly earn, nevertheless the Wheeling and Lake Erie's reduced rates, being Ohio intrastate rates, and therefore not directly under the jurisdiction of the Interstate Commerce Commission, the only remedy left to protestants and respondent is to temporarily correspondingly reduce their rates. The Wheeling and Lake Erie has no control over the Northern Ohio rates of protestants. Undoubtedly they confidently expected that protestants would [fol. 3055] not meet their northern Ohio reduced rates, because to do so would compel protestants to correspondingly reduce their Pittsburgh and Connellsville district rates to avoid unjust discrimination and undue preference and prejudice. On the other hand, respondent's Cleveland, Lorain and Huron rates apply via Wheeling and Lake Erie, and to prevent respondent from reducing its Pittsburgh district rates to meet the Wheeling and Lake Erie reduced northern Ohio rates that Company notified respondent that it would not participate in reduced rates published by respondent from its Pittsburgh district (See Appendix B). This fact, taken in connection with the further fact that the Wheeling

and Lake Erie limited its northern Ohio reduced rate tariff to August 1st, 1933, and the fact that the Wheeling and Lake Erie filed with the Commission a self-serving protest against respondent's reduced rate tariff, makes it clear that the sole object of the Wheeling and Lake Erie in reducing its northern Ohio rates was to temporarily divert Pittsburgh district tonnage, to which it is not entitled, to its northern Ohio mines, pending action by the Interstate Commerce Commission under Sections 13 and/or 3 of the Interstate Commerce Act, an action which ordinarily would take up approximately one year. The Wheeling and Lake Erie is an interstate carrier and a participant in respondent's Pittsburgh district tariff publishing rates to Cleveland, Lorain and Huron, and its action in reducing its own intrastate rates and in refusing to participate with respondent in corresponding reductions in interstate rates is clearly unjustly discriminatory, unduly preferential and prejudicial, and burdens interstate commerce. It is inconceivable that the Interstate Commerce Commission will permit the Wheeling and Lake Erie to succeed in an unlawful undertaking of this character by suspending respondent's tariff and thereby preventing respondent from protecting its revenues and avoiding the unjust discrimination and undue preference and prejudice, which the Wheeling and Lake Erie seeks to [fol. 3056] perpetuate at least until the Commission can remove it by an appropriate proceeding.

Respondent again points out that its situation entirely differs from the situation of protestants', who can largely protect their revenues by merely reducing their northern Ohio rates to meet the Wheeling and Lake Erie reductions. Protestants' Cleveland, Lorain and Huron coal must come from its Pittsburgh district mines if it is to move any coal, for the reason that unlike protestants it has practically no mines in the Ohio district, practically all of its mines being located in the Pittsburgh district. Unless, therefore, respondent is permitted to reduce its Pittsburgh district rates, respondent will be placed in financial peril. Approximately 84% of respondent's normal operating revenues come from coal and steel traffic; approximately 60% from coal; and approximately 24% from steel. As the Commission well knows steel traffic has all but disappeared temporarily during the depression, and respondent must almost wholly de-

pend upon its coal revenue for its very life blood. Cleveland, Lorain and Huron coal from its Pittsburgh district constitutes a substantial part of respondent's freight traffic and earns it a substantial part of its freight revenue as is shown by the following table:

[fol. 3057]

All Freight Revenue				
1928	1929	1930	1931	January to July, Incl. 1932
$4,016,948	$4,300,661	$3,423,493	$2,616,745	*$1,143,900
Freight Revenue from Pittsburgh District, Cleveland, Lorain and Huron Coal				
$178,024	$214,256	$141,109	$114,391	$63,074
Cleveland, Lorain and Huron Coal Tonnage from the Pittsburgh District				
305,175 net tons	374,137 net tons	261,540 net tons	185,144 net tons	94,996 net tons

*January to June, inclusive actual; July estimated.

The monthly reports to the Commission, January to July, 1932, inclusive, show that respondent's net railway operating income has fallen to $123,312, which makes it at once apparent that the loss of revenue from Cleveland, Lorain and Huron coal diverted to the northern Ohio districts would at this time result in financial distress if not disaster to respondent.

And now, having fully answered protestants and shown that respondent's proposed reduced rates are well above the level of minimum reasonable rates and are not unreasonably low as alleged by protestants, and are free from undue preference and prejudice and unjust discrimination, and are absolutely necessary to protect the revenues of protestant so far as may be possible until the Commission can take jurisdiction of this unfortunate situation in an appropriate proceeding under Sections 13 and/or 3 of the Act, respondent respectfully asks that protests of protes-
[fol. 3058] tants be not sustained and that respondent's tariff be permitted to go into effect.

Respectfully submitted, The Pittsburgh & West Virginia Railway Company, by R. M. Paisley, General Freight Agent. William S. Bronson, General Attorney.

Dated at Pittsburgh, Penna., August 22, 1932.

(Here follows table, side folio 3059)

[fol. 3059]

Appendix "A"

Comparative Statement of Rates, in Cents per 2000 Pounds, on Bituminous Coal From the Pittsburgh and Ohio

From

To	Roads	1 June 30, 1927 Pgh.	1 June 30, 1927 Ohio No. 8	2 July 1, 1917 Pgh.	2 July 1, 1917 Ohio No. 8	3 June 25, 1918 Pgh.	3 June 25, 1918 Ohio No. 8	4 Aug. 15, 1919 Pgh.	4 Aug. 15, 1919 Ohio No. 8	5 Aug. 26, 1920 Pgh.	5 Aug. 26, 1920 Ohio No. 8	6 Dec. 17, 1920 Pgh.	6 Dec. 17, 1920 Ohio No. 8	7 Feb. 4, 1921 Pgh.	7 Feb. 4, 1921 Ohio No. 8	8 Mar. 1, 1922 Pgh.	8 Mar. 1, 1922 Ohio No. 8	July Pgh.
Cleveland	W. & L. E.	100	90	115	105	150	140	145	135	205½	(1)195½ (2)189	205½	195½	205½	(1)195½ (2)189	205½	189	184
Huron	W. & L. E.	100	90	115	105	150	140	145	135	205½	(1)195½ (2)189	205½	195½	205½	(1)195½ (2)189	205½	189	184
Lorain	L. & W. V.	100	90	115	105	150	140	145	135	205½	(1)195½ (2)189	205½	195½	205½	(1)195½ (2)189	205½	189	184

Explanation of Reference Marks

(1) Interstate.
(2) Intrastate.
(3) Issued on order of P. U. C. of Ohio, dated Aug. 22, 1922, Docket No. 2601. Applies Intrastate only.
(4) Rates published to restore the parity with Interstate rates and the differential relationships with the Pittsburgh and Connellsville Districts, and are in harmony with the report of the I. C. C. in Ohio-Michigan Coal Cases, 80, I. C. C. 663, at page 690.

Tariff Rates

Tariff Authorities for Pittsburgh District rates.

Rates effective June 30, 1917, and July 1, 1917, P. & W. V. Ry. I. C. C. No. 230 (W. P. T. Ry.—W. S. B. R. R. Series)
" " June 25, 1918 " " " " " 12
" " from Aug. 15, 1919 to Sept. 1, 1922, inclusive, P. & W. V. Ry. I. C. C. No. 49
" " " Sept. 27, 1923 to Aug. 1, 1932, inclusive, " " " " 225

Appendix "A"

0 Pounds, on Bituminous Coal From the Pittsburgh and Ohio Number 8 Districts to Ohio Destinations

From

6		7		8		9		10		11		12		13		14		15
Dec. 17, 1920		Feb. 4, 1921		Mar. 1, 1922		July 1, 1922		Sept. 21, 1922		Sept. 27, 1923		Dec. 21, 1924		July 31, 1932		Aug. 1, 1932		Sept. 9, 1932
Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh.	Ohio No. 8	Pgh. (P. & W. V. Ry)
205½	195½	205½	(1)195½ (2)189	205½	189	184	174	184	(1)174 (3)170	184	(4)174	184	174	184	174	184	145	155
205½	195½	205½	(1)195½ (2)189	205½	189	184	174	184	(1)174 (3)170	184	(4)174	184	174	184	174	184	155	165
205½	195½	205½	(1)195½ (2)189	205½	189	184	174	184	(1)174 (3)170	184	(4)174	184	174	184	174	184	145	155

Explanation of Reference Marks

Tariff Authorities for Ohio Number 8 District rates.

Rates effective June 30, 1917, Agent F. V. Davis, I. C. C. No. 35, Ohio No. 36
" " July 1, 1917, " " " " " 36, " " 37
" " June 25, 1918, " " " " " 36, " " 37
" " Aug. 15, 1919 to Feb. 4, 1921, inclusive, P. & W. V. Ry. I. C. C. No. 49, Ohio No. 22
" " Mar. 1, 1922 to Sept. 21, 1922, inclusive, Agent F. V. Davis, I. C. C. No. 40, Ohio No. 40
" " Sept. 27, 1923, Agent F. V. Davis, I. C. C. No. 43, Ohio No. 43
" " Dec. 1, 1924, " " " " " 44, " " 44
" " Oct. 1, 1928, " " " " " 47, " " 47
" " July 31, 1932, " " " " " 48, " " 48
" " Aug. 1, 1932, " " " " " 48, " " 48

[fols. 3060 & 3061] APPENDIX "B"

The Wheeling and Lake Erie Railway Co.

The Lorain & West Virginia Railway Co.

Office of the General Traffic Manager, Huron-Sixth Building

Edward Briggs, Asst. to the General Traffic Manager

Cleveland, August 4th, 1932.

File HJA 42500-Tariff 503 Series.
" " CTEC-1696.
" " 31500-293.

Mr. R. M. Paisley, G. F. A., The P. & W. Va. Ry. Co., Pittsburgh, Penna.

DEAR SIR: This is to confirm my western union telegram sent you today, reading as follows:

"Telephone conversation twenty-first wandle concurred in pandwva publishing reduced coal rates from Ohio number eight mines to same destinations published via wandle please understand our concurrence covers only Ohio intrastate rates and wandle will not concur in reduced rates from Pittsburgh and other interstate origins on or via your line"

No doubt you will be governed accordingly,
Yours very truly, (Signed) Edward Briggs, Asst. to General Traffic Manager.

HJA:F

[fol. 3062] BEFORE INTERSTATE COMMERCE COMMISSION

PROTEST AND APPLICATION FOR SUSPENSION OF REDUCED RATES ON BITUMINOUS COAL FROM MINES ON THE PITTSBURGH AND WEST VIRGINIA RAILWAY COMPANY IN PENNSYLVANIA AND WEST VIRGINIA TO DESTINATIONS IN NORTHEASTERN OHIO IN BEHALF OF EASTERN OHIO COAL OPERATORS' ASSOCIATION—Filed Aug. 26, 1932.

To the Honorable the Interstate Commerce Commission:

Comes now Eastern Ohio Coal Operators' Association, and having heretofore on August 10, 1932, made application

for suspension of the tariff naming said reduced rates, by telegram, as authorized by Rule XIX of the Rules of Practice, now confirms and follows said application by this application in writing, as required by said rule, and in support of said protest and application respectfully represents and shows as follows:

I. Protestant is a voluntary association of operators producing coal in the No. 8 District of Ohio, with its principal office in Cleveland, Ohio. The objects of the Association, among others, are to secure fair and equitable rates over the lines over which the products of its members are carried, and to oppose and prevent the making or giving of unreasonably low rates, or any undue or unreasonable preference or advantage, to any person, company, firm, corporation, or locality engaged in the production, sale, or distribution of bituminous coal in competition with the [fol. 3063] coal produced, sold, and distributed by its members, or the subjecting of its members to any undue or unreasonable prejudice or disadvantage in any respect.

II. Protestants' members are engaged in the sale and distribution in Northeastern Ohio, of bituminous coal produced by them in the No. 8 District of Ohio, in competition with bituminous coal produced at mines on the lines of respondent in Pennsylvania and West Virginia.

III. On or about August 9th, 1932, respondent published and filed with the Interstate Commerce Commission Supplement No. 40 to its tariff I. C. C. No. 225, naming rates on bituminous coal from stations on the lines of the respondent in Pennsylvania and West Virginia to destinations in Northeastern Ohio. Typical instances of the present and proposed rate, together with straight average distances from mine stations on the Pittsburgh and West Virginia Railway Company in Pennsylvania and West Virginia to destinations in Northeastern Ohio, are as follows:

To	Average Distance	Present rate	Proposed rate
Cleveland	165 miles	1.84	1.55
Lorain	175 "	1.84	1.55
Huron	186 "	1.84	1.65

IV. In Republic Steel Corporation vs. Baltimore & Ohio R. R. Co., et al., No. 7252, decided June 30, 1932, the Public

Utilities Commission of Ohio found that there were no transportation conditions in Ohio which would warrant the maintenance or continuation of higher intrastate rates in [fol. 3064] Ohio than prevailed in Indiana and Illinois or between Indiana and Illinois, distances considered, and that the scales prescribed by the Interstate Commerce Commission for application within Illinois in Intrastate Rates on Bituminous Coal between Points in Illinois, No. 23130, 182 I. C. C. 537, and between Indiana and Illinois in Coal Trade Association of Indiana vs. Baltimore & Ohio R. R. Co., et al., No. 23922 (Sub. No. 2), 185 I. C. C. 225, furnished a basis for prescribing maximum reasonable rates from the No. 8 Middle-Coshocton and Massillon Districts, in Ohio, to Canton and Massillon. Pursuant thereto said Public Utilities Commission of Ohio prescribed a rate of $1.08 per ton from the No. 8 District to Canton and Massillon for an average distance of 75 miles and a rate of 80¢ per ton from the Middle-Coshocton District to Canton and Massillon for an average distance of 37 miles. Said rates so prescribed had the effect of widening the prior existing differences in rates between said districts.

V. On or about July 26, 1932, there was published and filed with the Public Utilities Commission of Ohio Supplement No. 27-A to Agent F. V. Davis' tariff Ohio No. 48 naming, effective August 1, 1932, via the Wheeling and Lake Erie Railway Company, the reduced rates prescribed by the Public Utilities Commission of Ohio set forth in paragraph IV hereof. Said tariff also named reduced rates via the Wheeling and Lake Erie Railway Company on the basis of the scale prescribed by the Interstate Commerce Commission in No. 23922 (Sub. No. 2) to other destinations on its lines and to destinations on the lines of the Lorain and West Virginia Railway Company and the Akron, [fol. 3065] Canton & Youngstown Railway Company in Northeastern Ohio, including Cleveland, Lorain, Huron and Akron. Said rates so published likewise had the effect of widening the prior existing differences in rates between said districts.

VI. On or about July 29, 1932, there was also published and filed with the Public Utilities Commission of Ohio Supplement No. 28 to Agent F. V. Davis' tariff Ohio No. 48 (Supp. No. 28 to Davis I. C. C. No. 48) naming the reduced

rates prescribed by the Public Utilities Commission of Ohio set forth in paragraph IV hereof to Canton and Massillon, effective August 1, 1932, via the lines other than the Wheeling and Lake Erie Railway Company.

VII. The reduced rate published in said Supplement No. 40 to Pittsburgh and West Virginia Railway Company's tariff I. C. C. 225 were published to meet the reduced rates referred to in paragraphs IV, V, and VI hereof but the said proposed reduced rates are on a lower level, distances considered, than the rates referred to in said paragraphs IV, V, and VI, and will produce a relationship with the rates from said No. 8, Middle-Coshocton and Massillon Districts to the same destinations, lower than the relationship which would result from the application of the scales prescribed by the Interstate Commerce Commission in No. 23130 and No. 23922 (Sub. No. 2).

VIII. There are no transportation conditions between Pennsylvania and West Virginia on the one hand and Ohio on the other hand which would warrant the establishment [fol. 3066] or maintenance of interstate rates on bituminous coal from points on the Pittsburgh and West Virginia Railway Company in Pennsylvania and West Virginia to destinations in Northeastern Ohio on a lower level, distances considered, than the rates referred to in paragraphs IV, V, and VI hereof.

IX. By reason of the facts hereinbefore alleged, the proposed reduced rates referred to in paragraph III hereof are and will be unjustly and unreasonably low, in violation of Section 1, and said rates will give to competitors of protestants' members located on the lines of the Pittsburgh and West Virginia Railway Company in Pennsylvania and West Virginia an undue and unreasonable preference or advantage, and will subject protestants' members to an undue and unreasonable prejudice or disadvantage, in violation of Section 3 of said act.

Wherefore, protestants pray that the tariff referred to in paragraph III hereof be suspended for a period of seven months beyond the time when it would otherwise take effect; and that the Commission institute upon its own motion a proceeding of investigations into the propriety of said proposed reduced rates, and that your protestant be

made a party to the said proceeding and be permitted to appear and offer evidence and be heard by brief and oral argument therein, and after a full hearing in said proceeding, the Commission find that the said proposed reduced rates are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial and unlawful, in violation of Sections 1 and 3 of the Interstate Commerce Act, [fol. 3067] and that the Commission make an order requiring the said tariff to be canceled, and such other or further order or orders as the Commission may consider proper in the premises.

Eastern Ohio Coal Operators' Association, by D. F. Hurd, Secretary. Ernest S. Ballard, Arvid B. Tanner, 120 South La Salle Street, Chicago, Illinois, Attorneys for the Above Named Protestant; Butler Pope Ballard & Elting, of Counsel.

August 24th, 1932.

[fol. 3068] BEFORE INTERSTATE COMMERCE COMMISSION

In the Matter of Pittsburgh & West Virginia Railway Supplement 40 to Freight Tariff F 287 I. C. C. 225

ANSWER OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY TO THE PROTEST AND PETITION OF EASTERN OHIO COAL OPERATORS' ASSOCIATION FOR SUSPENSION—Filed Sept. 2, '32

Comes now The Pittsburgh & West Virginia Railway Company, hereinafter termed "Respondent", and in answer to the protest of the Eastern Ohio Coal Operators' Association dated August 24, 1932, and signed by Ernest S. Ballard, Attorney for said Protestant, respectfully shows:

I

Respondent admits the allegations in the first sentence of paragraph I, but denies the allegations in the second sentence, paragraph I, averring that the very fact that protestant is now protesting against the continuance of the 10-cent differential rate relationship that has for years existed between Ohio No. 8 rates on the one hand and the Pittsburgh

district rates on the other hand conclusively demonstrates that the real object of the Association is to secure an undue advantage over the Pittsburgh district competitors of its members.

II

Respondent admits the allegations in paragraph II.

[fol. 3069]

III

Respondent admits the allegations in the first sentence of paragraph III. It denies the allegations in the second sentence of paragraph III, and avers that the average distances as shown are much greater than the true average distances as is conclusively shown in the Appendix attached to and made a part hereof.

IV, V, and VI

Respondent admits the allegations in paragraphs IV, V, and VI, but avers that there never was any relationship between the rates to Canton and Massillon from the Ohio No. 8 and Pittsburgh districts or between the Canton and Massillon rates and the Cleveland, Lorain and Huron rates from the Ohio No. 8 district. The action of the Ohio Commission in reducing the Canton and Massillon rates had no effect whatsoever upon the Cleveland, Lorain and Huron rates, and the purpose of the Wheeling and Lake Erie in reducing the Cleveland, Lorain and Huron rates was to unduly prefer protestants and unduly prejudice their Pittsburgh district competitors.

VII

Respondent denies the allegation in paragraph VII, and avers that its proposed Cleveland and Lorain group rate of $1.55 is exactly on the scale prescribed by the Commission in Docket No. 23922, and that its proposed Huron group rate of $1.65 is 10 cents higher than that scale.

VIII

Respondent admits the allegations in paragraph VIII.

IX

Respondent denies the allegations in paragraph IX, and avers that only by the preservation of the long established

[fol. 3070] and Commission approved 10-cent differential by the publication of its proposed rates can undue preference and prejudice and unjust discrimination be avoided.

And now having fully answered, respondent respectfully asks that the protest be not sustained, and that respondent's tariff be permitted to go into effect.

The Pittsburgh & West Virginia Railway Company, by William S. Bronson, General Attorney, 800 Southern Building, Washington, D. C.

Pittsburgh, Pa., September 1, 1932.

[fol. 3071] Appendix, Sheet 1

Mines on the Pittsburgh & West Virginia Railway Located in the Pittsburgh District that Shipped Bituminous Coal During the Two Year Period, August 1930 to July 1932

Name of Mine	Origin Station	Distance to Pittsburgh Junction, Ohio
No. 8	Cloverdale, Pa.	68.9 miles
No. 4	Horning, Pa.	67.0 "
No. 3	Benicoll, Pa.	64.6 "
No. 2	Castle Shannon, Pa.	63.5 "
No. 9	Avella, Pa.	28.9 "
Paxton	Avella, Pa.	28.9 "
Aurora	Avella, Pa.	28.9 "
Jefferson No. 1	Avella, Pa.	28.9 "
Waverly	Penowa, Pa.	25.7 "
Penobscot	Penowa, Pa.	25.7 "
Louise	Louise, W. Va.	22.4 "
Arnold	Rockdale, W. Va.	21.5 "
	Total miles	474.9 miles
	Average	39.6 miles

Tariff Authority for Distances: P. & W. V. Ry. I. C. C. No. 303.

[fol. 3072] Distances from Pittsburgh Junction, Ohio to W. & L. E. Ry. and L. & W. V. Ry stations Shown Below

To Cleveland-Lorain, Ohio Group

W. & L. E. Ry.	
Cleveland, Ohio	120 miles
Newburgh, Ohio	115 "
Miles Avenue, Ohio	114 "
Bedford, Ohio	108 "
Falls Junction, Ohio	104 "
Solon, Ohio	107 "
Chagrin Falls, Ohio	112 "
Twinsburg, Ohio	100 "
Moran, Ohio	96 "
Creston, Ohio	75 "
Burbank Spur, Ohio	79 "
Lodi, Ohio	83 "
Pawnee, Ohio	87 "
Spencer, Ohio	90 "
Wellington, Ohio	97 "

L. & W. V. Ry.

Lorain, Ohio	122 miles
South Lorain, Ohio	122 "
Quarry Junction, Ohio	107 "
Pitts, Ohio	103 "
Total	1,941 miles
Average	102.2 miles
Average from P. & W. V. Mines	141.8 miles

To Huron, Ohio Group

W. & L. E. Ry.

Huron, Ohio	133 miles
Milan, Ohio	124 "
Hartland, Ohio	112 "
Clarksfield, Ohio	108 "
Brighton, Ohio	102 "
Total	579 miles
Average	115.8 miles
Average from P. & W. V. Mines	155.4 miles

Tariff Authority for Distances: W. & L. E. Ry. I. C. C. No. 1632.

[fol. 3073] BEFORE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 3801

Coal from Pennsylvania to Northern Ohio

ORDER—Sept. 8, 1932

It appearing, That there has been filed with the Interstate Commerce Commission by The Pittsburgh & West Virginia Railway Company, a tariff containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 9th day of September, 1932, designated as follows:

The Pittsburgh & West Virginia Railway Company, Supplement No. 40 to I. C. C. No. 225;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of rates, charges, regulations and practices stated in the said schedules contained in said tariff, viz: on page 3 thereof, all provisions shown in connection with Index-Nos. 3950 and 3951; on page 4 thereof, all provisions shown in connection with Index-Nos. 3953, 3955, and 6929 to 7014, inclusive;

It further appearing, That said schedules make certain reductions in rates for the interstate transportation of bitu-

minous coal, in carloads, and the rights and interests of the public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in said tariff should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariff be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 9th day of April, 1933, unless otherwise ordered by the Commission, and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules, and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

And it is further ordered, That this proceeding be, and the same is hereby, assigned for hearing October 4, 1932, 10 o'clock A. M. Standard time, at the office of the Interstate Commerce Commission, Washington, D. C., before Examiner Weems.

By the Commission, Division 2.

George B. McGinty, Secretary. (Seal.)

[fol. 3074] BEFORE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 3801

Coal from Pennsylvania to Northern Ohio

PETITION FOR RECONSIDERATION AND CANCELLATION OF ORDER OF SUSPENSION

Comes now Western Pennsylvania Coal Traffic Bureau and respectfully petitions the Commission for re-argument

before the whole Commission, and reconsideration by the whole Commission of the order of suspension entered herein September 8, 1932, by Division 2; and for grounds of said petition, Western Pennsylvania Coal Traffic Bureau respectfully alleges that:

I

Western Pennsylvania Coal Traffic Bureau is a voluntary association of operators of mines producing bituminous coal in the Freeport, Pittsburgh and Connellsville districts in the State of Pennsylvania, with its principal office located in Pittsburgh, Pa., and with the mines of its members located on the following railroads:

Baltimore and Ohio Railroad Company,
Monongahela Railway Company,
Montour Railroad Company,
Pennsylvania Railroad Company,
Pittsburgh, Chartiers & Youghiogheny Railway Company,
Pittsburgh and Lake Erie Railroad Company,
Pittsburgh & West Virginia Railway Company,
Unity Railways Company.

Western Pennsylvania Coal Traffic Bureau appeared and made a statement before the Suspension Board herein.

II

Petitioner's members produce annually at their mines in said districts from fifteen to twenty-five million tons of bituminous coal, a very large part of which is shipped to markets in interstate commerce, one of the most important of said markets being communities located in northeastern Ohio, which, for the purpose of this petition, may be described as embracing that portion of Ohio east of the Sandusky-Galion line and north of an east and west line drawn through Columbus.

III

By the order of Division 2 herein dated September 8, 1932, [fol. 3075] there was suspended until April 9, 1933, the operation of certain schedules as published in Supplement No. 40 to the Pittsburgh & West Virginia Railway Company's Tariff I. C. C. No. 225. The Commission's press notice stated:

The suspended schedules propose to reduce the rates on bituminous coal from points in western Pennsylvania to Cleveland, Lorain and Huron, Ohio, and certain intermediate Ohio destinations.

The following statement of rates is illustrative:

Rates in Cents per Ton of 2,000 Pounds from Avella, Pa.

To	Present	Proposed
Cleveland, Ohio	184	155
Huron, Ohio	184	165
Lorain, Ohio	184	155

IV

For many years past the rates on bituminous coal from western Pennsylvania mines, and specifically by way of illustration, from mines in the Pittsburgh district to Cleveland, have been ten (10) cents per net ton in excess of the contemporaneously effective rates from mines in the Ohio Number 8 district to the same destinations, including Cleveland. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 81.

Contemporaneously, the rates on bituminous coal from Ohio Number 8 mines to such destinations as Erie, Pa., and Buffalo, N. Y. have been the same as the rates from Pittsburgh.

Effective August 1, 1932, the Wheeling & Lake Erie Railway Company published reductions in the intrastate rates from its mines and effective August 12, 1932 the Pittsburgh & West Virginia reduced the rates from their mines in the Ohio Number 8 district to destinations in northeastern Ohio, the reduction to Cleveland being 29 cents per ton.

Subsequently, and prior to the proposed effective date of the Pittsburgh & West Virginia rates under suspension herein, the Baltimore & Ohio Railroad, New York Central System, and Pennsylvania Railroad published and made effective on short notice reduced rates from their mines in the Ohio Number 8 district to destinations in northeastern Ohio upon the same level as had been published by the Wheeling & Lake Erie from its mines in said district effective August 1, 1932 as aforesaid; but the trunk lines failed and refused contemporaneously to publish similar reductions in the interstate rates from their mines in the western Pennsylvania districts to destinations in northeastern Ohio but on the contrary protested against and prayed suspension of the

proposed reduced rates published by the Pittsburgh & West Virginia from its Pittsburgh district mines in interstate commerce to northeastern Ohio destinations.

[fol. 3076] The reductions proposed by the Pittsburgh & West Virginia and which are under suspension herein by order of Division 2 were made to meet the reductions on intrastate traffic by the Wheeling & Lake Erie and the Pittsburgh & West Virginia and thus to maintain from some Pittsburgh district mines the long established differential relationship between Ohio Number 8 mines and such Pittsburgh district mines in the markets of northeastern Ohio.

The table below shows the past, present, and the Pittsburgh & West Virginia proposed rates and the relationship of rates on bituminous coal from the Ohio Number 8 and the Pittsburgh districts to Cleveland, Huron, and Lorain, Ohio, the three destinations mentioned in the Commission's memorandum for the press, with respect to its suspension order in this proceeding as illustrative:

Rates (Cents per Net Ton) on Bituminous Coal

To	From Pittsburgh (all lines)	From Pittsburgh (P. & W. V. only)	From Ohio Number 8 (all lines)
Cleveland			
Before 8/1/32	184		174
Effec. 8/1/32	184		145 (A)
Effec. 9/9/32		155 (B)	
Lorain			
Before 8/1/32	184		174
Effec. 8/1/32	184		145 (A)
Effec. 9/9/32		155 (B)	
Huron			
Before 8/1/32	[redacted]		174
Effec. 8/1/32	184*		155 (A)
Effec. 9/9/32		165 (B)	

Notes. (A) Published effective 8/1/32 by W. & L. E., subsequently published by trunk lines and the P. & W. V.
(B) Suspended herein.

*Applicable only from mines on P. & W. V. and Montour.

The result of the reductions in rates from the Ohio Number 8 district to northeastern Ohio destinations effective August 1, 1932 has been to increase the former 10 cent differential of the Pittsburgh district mines over the Ohio Number 8 mines to 39 cents per net ton, using Cleveland, Ohio as a typical destination.

The effect of the proposed reductions of the Pittsburgh & West Virginia from its Pittsburgh district mines to northeastern Ohio destinations will be to restore the differential

relationships between the Ohio Number 8 and the Pittsburgh district mines located on the Pittsburgh & West Virginia to the same basis which had always existed up until August [fol. 3077] 1, 1932.

The further proposal of the Pittsburgh & West Virginia, as stated in the course of the hearing before the Suspension Board, is, should its proposed reduced rates be permitted to become effective, to extend the application thereof to mines located on short-line connections from which the Pittsburgh & West Virginia has heretofore customarily applied via its line the same Pittsburgh district rates as apply from mines on its lines.

V

Northeastern Ohio is a populous and highly industrialized territory wherein large volumes of bituminous coal are consumed, and constitutes one of the largest markets of the commercial coal producers of the western Pennsylvania districts. The consumption of bituminous coal in northeastern Ohio is of both steam and domestic coals in one class, and gas and metallurgical coals in another class. Gas and metallurgical coals are not produced in the Ohio districts, but steam and domestic coals are produced in both the western Pennsylvania and the Ohio districts, and are consumed to the extent of many millions of tons in northeastern Ohio. The principal competition in the sale of steam and domestic coal in northeastern Ohio is between the eastern Ohio districts, including Ohio Number 8, and the western Pennsylvania districts.

The production of gas and metallurgical coals in the western Pennsylvania districts and their shipment to northeastern Ohio destinations is largely a production and movement of captive coal. The production of steam and domestic coal in the western Pennsylvania districts and their shipment to northeastern Ohio destinations, is largely a production and movement of commercial coal.

Bituminous coal consumers in the northeastern Ohio markets have definitely informed producers of coal in the western Pennsylvania districts that while Pittsburgh district coal may be worth 10 cents more per ton in Cleveland than is Ohio Number 8 coal it is not worth 39 cents more, and that they will not purchase western Pennsylvania coal at a freight

rate 39 cents per ton in excess of the contemporaneously effective rates applying from mines in the Ohio Number 8 district. Many of such consumers have already discontinued purchasing coal from the western Pennsylvania districts. The consequent prospective loss of business by western Pennsylvania mines will aggregate several million tons per annum. The loss in the case of one producer alone is estimated at not less than 3000 tons daily.

Approximately 62.2 per cent of all the bituminous coal shipments from western Pennsylvania districts to Central [fol. 3078] Freight Association territory moves to destinations in northeastern Ohio; 26 per cent of all western Pennsylvania coal shipped to Central Freight Association territory moves to destinations in northeastern Ohio, to which the rates from the Ohio Number 8 district have already been reduced. These figures indicate the vital necessity of protection by the Commission of the long-standing differential relationships as between the western Pennsylvania and Ohio Number 8 competing producing districts, and the protection is particularly necessary because destination competition will doubtless provoke further reductions from Ohio mines to other destinations in northeastern Ohio.

VI

The proposed rates published by the Pittsburgh & West Virginia, and now under suspension herein, are just and reasonable rates. This is so first, by comparison with the rates which are now in effect from Ohio Number 8 mines to the same destinations. They are upon almost exactly the same level as the rate from the Connellsville, Pa., district to Youngstown, Ohio, which was voluntarily established, and has long been voluntarily maintained by the carriers and upon which several million tons of bituminous coal are moved annually. They are 82 per cent of the rates named in the Holmes & Hallowell scale for the same lengths of haul (32 per cent of $1.90, the H. & H. rate for 160 mines, being $1.55) whereas the Commission in this same territory has prescribed rates only about 75 per cent of the rates on the Holmes & Hallowell scale for the same hauls (75 per cent of $1.02, the Holmes & Hallowell rate for 43 miles, being 77¢.) Bituminous Coal to Youngstown, 163 I. C. C. 3, 13; and to the same general effect see American Rolling

Mill Co. v. Baltimore & Ohio Railroad Co., 173 I. C. C. 357, and Ex-Ohio-River Coal to Ohio Points, 185 I. C. C. C. 211.

[fol. 3079] The table following compares the rates proposed with other rates on bituminous coal, many of which move large volumes of such coal in this particular territory, and emphatically demonstrate that the proposed rates now under suspension are just and reasonable:

Rates in Cents per Net Ton Upon Bituminous Coal

From	To	Distance	Proposed Rate
P. & W. V. Ry. Mines			
(Pittsburgh District)	Cleveland, Ohio	160	$1.55
" "	Lorain, Ohio	163	1.55
Ohio No. 8 District	Cleveland, Ohio	155	1.45
" " "	Huron, "	157	1.55
" " "	Lorain, "	149	1.45
Fairmont "	Youngstown, "	185	1.58
* Connellsville "	" "	142	1.42
Cambridge District (B. & O.)	" "	223	1.51
Docket No. 23922 Scale	(185-I. C. C. 225)	160	1.55
Cambridge Dist ict (B. & O.)	Akron, Ohio	168	1.51
Middle District (1)	Lorain, "	158	1.33

*These are rates now in effect.

(1) From mines on the N. Y. C. via N. Y. C., Newton Falls, O., and B. & O. R. R.

Tariff Authorities:

P. & W. V. Ry. Tariff I. C. C. No. 225.
F. V. Davis' Tariff I. C. C. No. 48.
P. R. R. Tariff AA-I. C. C. No. 2035.
P. & L. E. R. R. Tariff I. C. C. No. 2800.
B. & O. R. R. Tariff C. & C. Series I. C. C. No. 2725.

VII

The proposed rates now under suspension herein will remove in part a now existing undue and unreasonable advantage and preference in favor of Ohio Number 8 mines in intrastate commerce and an undue and unreasonable prejudice against Pittsburgh district mines in interstate commerce with respect to traffic moving from such mines to northeastern Ohio destinations, and will thus remove an unjust discrimination against interstate commerce. A further removal of unjust discrimination against interstate commerce will be accomplished should the now suspended rates be permitted to become effective, by reason of the proposal of the Pittsburgh & West Virginia, in that event, to reduce the rates from short line connections from which it now applies via its line Pittsburgh district rates to northeastern Ohio destinations.

VIII

Unless the Commission cancels the order of suspension herein and permits the reduction in rates proposed by the Pittsburgh & West Virginia to become effective, this Commission will be powerless to remove the existing unjust discrimination against interstate commerce violative of Sec- [fol. 3080] tion 13 of the Act.

The reduced rates now effective intrastate from Ohio Number 8 to northeastern Ohio destinations are all published to expire on August 1, 1933. The order of suspension entered herein by Division 2 suspends the operation of the Pittsburgh & West Virginia's proposed reduced rates until April 9, 1933. The usual and ordinary course of procedure in investigation and suspension proceedings would seem to indicate that the investigation ordered by Division 2 herein would probably not be concluded before the expiration of the full seven months suspension period. If, as has been intimated, the trunk line carriers who are protestants against the reduced rates proposed by the Pittsburgh & West Virginia, will file with the Commission a petition alleging that the existing rates and relationship of rates from and as between eastern Ohio and western Pennsylvania districts to northeastern Ohio destinations violate Sections 13, the investigation thereof will also not likely be concluded before the expiration of the full seven months period of suspension.

Should the Commission after the termination of such proceedings find that Section 13 had been violated and enter orders requiring the removal of such violations by raising the intrastate rates in Ohio, the legal and constitutional questions involved in such orders would be such as to produce great lik-lihood that such orders would be attacked in the Courts and might be enjoined until substantially the full period of the now-published effectiveness of the Ohio intrastate rates.

The consequence would be that the Commission would find itself powerless by virtue of its own suspension order to remove a palpable unjust discrimination against interstate commerce before the issue should become moot. United States v. Anchor Coal Company, et al., 279 U. S. 812.

IX

Should the Commission cancel the outstanding suspension order of Division 2 herein, the entire question of the rates

and the relationship of rates from eastern Ohio and from western Pennsylvania mines to destinations in northeastern Ohio may be investigated by the Commission, should it deem such investigation to be advisable, in a proceeding on its own motion entered into under Section 13 (2) of the Act. Pending such investigation the Commission should, and in compliance with its statutory duty, could avoid the existing unjust discrimination against interstate commerce violative of Section 13 by cancellation of the order of suspension entered herein by Division 2 and by permitting the tariffs now under suspension to become effective.

[fol. 3081] Wherefore, your petitioners respectfully pray that the Commission forthwith order argument herein before the whole Commission; that the Commission reconsider the action of Division 2 herein in its order of September 8, 1932; that after such reargument and reconsideration the Commission shall order said order of September 8, 1932 by Division 2, to be cancelled forthwith; and that the Commission shall permit the proposed reduced rates of the Pittsburgh & West Virginia now under suspension herein to become immediately effective.

Respectfully submitted, Western Pennsylvania Coal Traffic Bureau, Petitioner, by August G. Gutheim, 712 Jackson Place, Washington, D. C., Attorney.

A. S. Boden, Empire Building, Pittsburgh, Pa., Secretary.

September 14, 1932.

Duly sworn to by A. S. Boden. Jurat omitted in printing.

[fol. 3082] [Stamp:] Filed Sep. 17, 1932. Interstate Commerce Commission.

August G. Gutheim, Attorney at Law, 712 Jackson Place, Washington, D. C.

September 17, 1932.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

In Re: I. & S. Docket 3801—Coal from Pennsylvania to Northern Ohio

Dear Sir: In connection with petition which I filed with the Commission September 16, 1932, seeking argument be-

fore the entire Commission and immediate cancellation of the outstanding order of suspension in the above-entitled proceeding, I am bringing to your attention facts which came to my knowledge this morning and which it seems to me the Commission should have before it in its consideration of this subject:

The Public Utilities Commission of Ohio in its Docket No. 8072 some time ago issued a rule upon the carriers serving the Hocking, Crooksville and Cambridge districts, requiring them to show cause why they should not make reductions in rates on bituminous coal from those districts to northeastern Ohio destinations to which the respondent carriers had previously voluntarily made reductions from the Ohio Number 8 district. That hearing was held on September 13, 1932.

On September 15, 1932 the Ohio Commission in the same proceeding issued its order to the respondent carriers requiring that effective September 20, 1932, they reduce the rates from Hocking, Crooksville, and Cambridge districts to these northeastern Ohio destinations. The result, taking Cleveland as the typical destination, is as follows:

Hocking for a haul of 249 miles to Cleveland, will pay a rate of $1.60 per net ton.

Cambridge with a haul of 202 miles to Cleveland, will pay a rate of $1.45 per ton.

Compared with these the proposed rate of the Pittsburgh & West Virginia from the Pittsburgh District to Cleveland now under suspension herein, is $1.55 per net ton for 160 miles.

A copy of this communication is being sent to Messrs. Leo P. Day, Guernsey Orcutt, Chas. R. Webber, A. P. Martin, W. S. Bronson, and Roy S. Kern, all of whom were represented at the hearing before the Suspension Board in connection with the filing of the P. & W. V. rates now under suspension herein.

Yours truly, August G. Gutheim, Attorney for Western Pennsylvania Coal Traffic Bureau, Petitioner.

[fol. 3083] BEFORE INTERSTATE COMMERCE COMMISSION

Investigation & Suspension Docket No. 3801

COAL FROM PENNSYLVANIA TO NORTHERN OHIO

PETITION OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY FOR RECONSIDERATION AND VACATION OF THE ORDER

OF THE COMMISSION, DIVISION 2, SUSPENDING ON THE PROTESTS OF THE PENNSYLVANIA RAILROAD, BALTIMORE AND OHIO RAILROAD, AND NEW YORK CENTRAL RAILROAD, THE OPERATION OF THE SCHEDULES CONTAINED IN THE TARIFF OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY, SUPPLEMENT NO. 40 TO I. C. C. NO. 225, PUBLISHING REDUCED INTERSTATE RATES TO CLEVELAND, LORAIN AND HURON, OHIO, FROM THE PITTSBURGH DISTRICT TO PREVENT THE BARRING OF COMPETITIVE PENNSYLVANIA COAL FROM THE NORTHEASTERN OHIO MARKET, MADE NECESSARY BY THE ACTION OF THE WHEELING AND LAKE ERIE RAILWAY REDUCING ITS OHIO INTRASTATE RATES ON OHIO COAL FROM THE OHIO NO. 8 DISTRICT TO CLEVELAND, LORAIN AND HURON, OHIO, FOLLOWED BY CORRESPONDING REDUCTIONS IN THEIR OHIO INTRASTATE RATES ON OHIO COAL FROM THE OHIO NO. 8 DISTRICT BY THE PENNSYLVANIA RAILROAD, BALTIMORE AND OHIO RAILROAD, AND NEW YORK CENTRAL RAILROAD, BUT DENIED TO COMPETITIVE PENNSYLVANIA INTERSTATE COAL FROM THE PITTSBURGH DISTRICT.

Comes now The Pittsburgh & West Virginia Railway Company, respondent in the above-entitled proceeding, and respectfully petitions the Commission to reconsider and vacate, upon argument before the Commission if necessary, the order of the Commission, Division 2, dated September 8, 1932, in said proceeding and in support of said petition respectfully shows:

[fol. 3084] Statement of the Case

The No. 8 coal district of Ohio and the Pittsburgh coal district of Pennsylvania adjoin; the Ohio River separating the two districts. The average haul from the Ohio No. 8 district is slightly less than from the Pittsburgh district, and for more than 20 years prior to August 1, 1932, with two short interruptions, the rates from the two districts to Cleveland, Lorain and Huron have been inter-related by a 10-cent differential Ohio No. 8 under Pittsburgh. Notwithstanding the fact that the existing differential approved by the Commission in the Ohio-Michigan Coal Cases, 80 I. C. C. 663, provided for a $1.74 Ohio No. 8 rate to Cleveland, Lorain and Huron, on August 1, 1932, without any order of the Public Utilities Commission of Ohio, but with

its consent to publish the reduced rates on one day's notice, the Wheeling and Lake Erie Railway in a bold-faced attempt to monopolize the Ohio coal market to the exclusion of Pennsylvania coal reduced its $1.74 Ohio No. 8 intrastate rates to Cleveland and Lorain 29 cents per ton to $1.45, and Huron 19 cents per ton to $1.55, conforming to the scale of maximum rates recently prescribed by the Commission in Coal Trade Association of Indiana v. R. & O. R. Co., 185 I. C. C. 225, applicable in Central Freight Association territory, where transportation conditions are substantially similar to those in the Ohio and Pittsburgh districts. They thereby widened the long-standing and Commission-approved differential to Cleveland and Lorain in favor of Ohio intrastate coal and against Pennsylvania interstate coal from 10 to 39 cents and to Huron from 10 to 29 cents. The Wheeling and Lake Erie tariff expires by limitation August 1, 1933.

The Pittsburgh & West Virginia Railway, Pennsylvania Railroad, New York Central Railroad, and Baltimore and Ohio Railroad appealed to the Supreme Court of the State of Ohio by petition for an injunction prohibiting the Wheel- [fol. 3085] ing and Lake Erie applying the reduced rates, but the Court refused the relief sought.

Thereupon, the Pittsburgh & West Virginia Railway, which, unlike the Pennsylvania Railroad, Baltimore and Ohio Railroad, and New York Central Railroad which serve many mines in the Ohio No. 8 district, has but three small mines in the Ohio No. 8 district from which Cleveland, Lorain and Huron coal tonnage is negligible, temporarily reduced its $1.74 Ohio intrastate rates from those mines to Cleveland, Lorain and Huron, corresponding to the reductions made by the Wheeling and Lake Erie Railway, and despite the refusal of the Wheeling and Lake Erie Railway to participate, filed with the Interstate Commerce Commission, effective September 9, 1932, Supplement No. 40 to Tariff I. C. C. No. 225, correspondingly reducing for the same period its $1.84 Pittsburgh district interstate rates, from which district practically all its Cleveland, Lorain and Huron coal moves, to thereby preserve the long-standing 10-cent differential and prevent the barring of its Pennsylvania interstate coal from the Cleveland, Lorain and Huron market. Effective September 2, 1932, the Pennsylvania Railroad, Baltimore and Ohio Railroad and New York

Central Railroad by special permission of the Public Utilities Commission of Ohio reduced the Ohio intrastate rates from their Ohio No. 8 mines to Cleveland, Lorain and Huron corresponding to the reductions made by the Wheeling and Lake Erie Railway. They did not, however, reduce their inter-related Pennsylvania interstate rates from the Pittsburgh district, but protested the tariff of the Pittsburgh & West Virginia Railway, publishing the correspondingly reduced interstate rates from the Pittsburgh district.

By subsequent order, dated September 2, 1932, the Public Utilities Commission of Ohio cited the Pennsylvania, Baltimore and Ohio, and New York Central Railroad Companies to show cause on September 13th why they should not [fol. 3086] be required by order to establish from other districts in Ohio, including the Hocking and Cambridge districts, the reduced rates to Cleveland, Lorain and Huron which they and the Wheeling and Lake Erie now apply from the Ohio No. 8 district without any order of that Commission, and it is fair to assume that within the near future the reduced Ohio intrastate rates of $1.45 to Cleveland and Lorain and $1.55 to Huron will be made applicable from all mines in Ohio.

Preservation of the Cleveland, Lorain and Huron market for Pittsburgh district coal being vital to its financial welfare and to the welfare of its Pittsburgh district operators, at the request of the Pittsburgh & West Virginia Railway a hearing on the protested tariff of the Pittsburgh & West Virginia was had before the Suspension Board on August 26th.

Despite the conclusive showing made at the hearing that the proposed interstate rates of the Pittsburgh & West Virginia from the Pittsburgh district of $1.55 to Cleveland and Lorain and $1.65 to Huron, which also conformed to the scale recently prescribed by the Commission in the Coal Trade Association of Indiana Case, supra, and therefore so closely approximated maximum rates as to be reasonable in every respect that even protestants were unwilling to claim that the proposed rates were either violative of Sections 1 and 3; that the reductions in interstate rates were necessary to avoid unjust discrimination against Pennsylvania shippers, localities and coal and against interstate commerce; that protestants by favoring their Ohio No. 8 intrastate shippers at the expense of their Pennsylvania

interstate shippers were unjustly discriminating against Pennsylvania shippers, localities, coal, and against interstate commerce contrary to the rulings of the Commission; and that Pennsylvania coal would be entirely barred from the Cleveland, Lorain and Huron steam and domestic market unless the 10-cent differential of long standing was [fol. 3087] preserved, the Commission by Division 2, disregarding the fact that the proposed rates were perfectly reasonable measured by their own scale of rates and the voluntary maximum rates for like hauls of protestants in the same territory, and indeed, much higher than the $1.28 rate to Cleveland, Lorain and Huron on Canadian coal, which the Commission permitted protestants to establish on one day's notice only a few days ago, ordered the tariff suspended, and by its action thereby barred Pennsylvania coal from access to a large and important Ohio market long enjoyed by Pennsylvania coal in reasonable competition with Ohio coal to the serious financial injury of the Pittsburgh & West Virginia Railway, the Pennsylvania coal industry, and the State of Pennsylvania. In doing so, the Commission played right into the hands of the Wheeling and Lake Erie Railway, whose sole object in voluntarily reducing its Ohio rates was to bar Pennsylvania coal from the northern Ohio market, evidenced by its refusal to join the Pittsburgh & West Virginia in corresponding reductions on Pennsylvania coal from the Pittsburgh district. The action of the Commission, Division 2, in suspending the Pittsburgh & West Virginia tariff was clearly wrong and the Commission should promptly reconsider its action, vacate the order, and permit the rates to go in effect.

The Positions of Protestants and Respondent

Protestants took the position, unsound on its face, that they should be permitted to unjustly discriminate against Pennsylvania shippers, localities, and interstate coal in favor of Ohio shippers, localities, and intrastate coal by picking out their Ohio No. 8 intrastate shippers, putting them in competition with Wheeling and Lake Erie Ohio No. 8 shippers, by correspondingly reducing their Ohio No. 8 rates, while denying like treatment to their Pittsburgh district interstate shippers who are just as much in competition with Wheeling and Lake Erie Ohio No. 8 shippers as are protestants Ohio No. 8 shippers, and that pending de-

[fol. 3088] termination of an investigation under a prospective Section 13 (4) petition, the Commission should bar Pennsylvania coal from competition with Ohio coal in the northern Ohio market by suspending the Pittsburgh & West Virginia Railway tariff reducing the Pittsburgh district interstate rates corresponding to the reductions made by the Wheeling and Lake Erie Railroad, Pennsylvania Railroad, Baltimore and Ohio Railroad, New York Central Railroad in their Ohio No. 8 Ohio intrastate rates, even though the only witness protestants offered denied that the proposed rates of the Pittsburgh and West Virginia Railway were violative of either Sections 1 or 3.

Protestants' mistaken theory was that unless they themselves created an unjust discrimination against Pennsylvania interstate commerce in favor of Ohio intrastate commerce by creating a disparity between their own Ohio No. 8 and their Pittsburgh district rates obtained by reducing their Ohio No. 8 intrastate rates without correspondingly reducing their Pittsburgh interstate rates they would be unable to secure relief, if any, under Section 13 (3) and (4), and that if the Pittsburgh & West Virginia reductions were permitted to go into effect they would have to correspondingly reduce their Pittsburgh district rates, and thereby deprive themselves of relief under Section 13 (3) and (4), since then there would be no undue disparity between their Pittsburgh interstate and their Ohio intrastate rates—a fallacious theory indeed.

On the other hand, respondent contended that its reduced Pittsburgh district rates were perfectly reasonable, and admittedly not in violation of either Sections 1 or 3; that the Pittsburgh & West Virginia Railway owed the duty to itself and to its Pittsburgh district shippers to preserve the Cleveland, Lorain and Huron market to Pennsylvania interstate coal by maintaining the long standing and Commission-approved differential of 10 cents; that the Pennsylvania, Baltimore and Ohio, and New York Central owed the same duty to their Pittsburgh district shippers and [fol. 3089] having permitted their Ohio No. 8 intrastate shippers to meet the competition of the Wheeling and Lake Erie Ohio No. 8 intrastate shippers, they were in duty bound under the law as laid down by the Commission in innumerable cases to accord their Pittsburgh district interstate shippers identically the same treatment accorded their Ohio

No. 8 intrastate shippers; that the discrimination against interstate commerce, if any, having been created by the act of the Wheeling and Lake Erie Railway in reducing its Ohio No. 8 intrastate rates, protestants were not compelled to create a rate disparity by reducing their Ohio No. 8 intrastate rates without correspondingly reducing their Pittsburgh district interstate rates, and then sit idly by and see their Cleveland, Lorain and Huron market for Pennsylvania interstate coal destroyed, and their Piftsburgh district shippers seriously injured financially, in order to obtain relief, if any, under Section 13 (3) and (4); but that protestants should avoid unjust discrimination against interstate commerce, Pennsylvania shippers, Pennsylvania localities, and Pennsylvania coal by correspondingly reducing their Pittsburgh district interstate rates; and that having done so, the Commission has power under Section 13 (3) and (4) to determine upon investigation whether the reduced Ohio intrastate rates place an undue burden upon the revenues of the carriers and therefore upon interstate commerce, and if so to remove that burden by fixing the measure of the Ohio intrastate or the Pennsylvania interstate rates or both under its maximum, absolute and minimum rate powers derived from Section 15 of the Act.

Since the Commission, Division 2, suspended the rates which were conclusively shown at the hearing to be perfectly reasonable and free from the taint of unjust discrimination and undue preference or prejudice, and absolutely necessary to prevent the barring of Pennsylvania coal from the northern Ohio market, respondent must assume that the Commission, Division 2, proceeded under the mistaken theory that carriers can not obtain relief [fol. 3090] under Section 13 (3) and (4) without a showing of rate disparity; when, as we shall show, relief under Section 13 (3) and (4) can be obtained upon the showing by complaining carriers that the reduced intrastate rates place a burden upon the revenues of the interstate carriers, and therefore upon interstate commerce, even though the complaining carriers were forced by competition to temporarily reduce their intrastate and interstate rates to protect their intrastate and interstate commerce.

Protestants' Object in Seeking the Suspension of Respondent's Tariff is No Justification of Unjust Discrimination Against Interstate Commerce

Protestants' object in reducing their Ohio No. 8 intrastate rates without correspondingly reducing their related Pittsburgh district interstate rates, and securing the suspension of the Pittsburgh & West Virginia proposed reduced interstate rates from the Pittsburgh district was to protect their steam and domestic coal tonnage by switching it from their Pittsburgh to their Ohio No. 8 district, gain from 300,000 to 400,000 tons of Pittsburgh & West Virginia Pittsburgh district steam and domestic coal, which would necessarily switch largely to protestants' Ohio No. 8 mines, and save the reduction on their Pittsburgh district, by-product and gas coal, and possibly on their Connellsville coal, though it does not necessarily follow that the present differential of 6 cents Connellsville over Pittsburgh need longer be preserved, and that is exactly what protestants accomplished by obtaining the suspension of the Pittsburgh & West Virginia reduced interstate rates from the Pittsburgh district. To do this it was absolutely necessary for them to adopt an unjustly discriminatory policy against Pennsylvania coal in favor of Ohio coal by reducing their Ohio No. 8 rates without correspondingly reducing their Pittsburgh district rates, and thereby bar Pennsylvania coal from common Ohio markets at the expense of the Pittsburgh & West Virginia Railway Com-
[fol. 3091] pany, the coal industry of Pennsylvania, and the State of Pennsylvania. When protestants reduced their Ohio No. 8 rates to enable their Ohio No. 8 shippers to compete with Wheeling and Lake Erie Ohio No. 8 shippers, under all the rulings of the Commission, to avoid unjust discrimination they were compelled by law to correspondingly reduce their Pittsburgh district rates, regardless of the effect upon their revenues, and the Interstate Commerce Commission can not afford to put its stamp of approval on a carrier policy which has the effect of barring Pennsylvania coal from common Ohio markets merely because protestants will lose revenue by observing the law and avoiding unjust discrimination. Obviously, once the Interstate Commerce Commission, in disregard of all its previous rulings, puts its stamp of approval upon a car-

rier policy, that has the effect of approving unjust discrimination and thereby barring Pennsylvania coal from common Ohio markets, how long will it be before the State of Pennsylvania, in reprisal, will reduce the Pennsylvania intrastate rates to thereby bar Ohio coal from common Pennsylvania markets, and incidentally the coal of other states, all of which now find a free market in Pennsylvania just as Pennsylvania coal has an inherent right to find a free market in Ohio, now denied by the suspension of the Pittsburgh & West Virginia tariff. It is a certainty that no state will long stand to have its products barred from another state by unjust discriminatory rates, particularly, where, as in this case, the rates necessary to protect Pennsylvania coal are perfectly reasonable. To avoid the unusual and dangerous situation created by the suspension of the Pittsburgh & West Virginia tariff, the Commission should promptly vacate the order of suspension and permit the rates to go in effect.

Gist of the Evidence Introduced at the Hearing

Practically all coal producers on the Pittsburgh & West Virginia Railway, Pennsylvania Railroad, Baltimore and [fol. 3092] Ohio Railroad, and New York Central Railroad, in the Pittsburgh district, were represented at the hearing, and without a single exception strongly supported the Pittsburgh & West Virginia Railway in its effort to prevent the barring of Pennsylvania coal from the Cleveland, Lorain and Huron markets, testifying in short that Pennsylvania coal for steam and domestic purposes would be barred from the Cleveland, Lorain and Huron market unless the long standing rate differential of 10 cents was preserved as proposed by the Pittsburgh & West Virginia Railway. The Otis Steel Company, a large user of steam coal in Cleveland, testified that since August 1st, when the Wheeling and Lake Erie's reductions went into effect, though customarily a large purchaser of coal in the Pittsburgh district, and particularly at Pittsburgh & West Virginia mines in that district, they had discontinued the purchase of Pennsylvania coal and would not resume the purchase of Pennsylvania coal unless the Pittsburgh & West Virginia's reduced rates went into effect. The principal shipper on the Pittsburgh & West Virginia testified that

his company had been unable to sell Cleveland, Lorain and Huron coal since August 1st, and that between August 1st and August 26th their sales had dropped from 10,000 to 15,000 tons to 1,000 tons, and that with a 39-cent differential to Cleveland and Lorain and a 29-cent differential to Huron, Pennsylvania coal would be barred from the steam and domestic market in Cleveland, Lorain and Huron.

The witness for the Pittsburgh & West Virginia showed at the hearing that the proposed rates of $1.55 to Cleveland and Lorain, and $1.65 to Huron were perfectly reasonable rates, measured by many maximum rates voluntarily published by the Pennsylvania, Baltimore and Ohio, and New York Central for like hauls in the same territory; measured by the $1.46 Lake Cargo rate (reduced August 25th to $1.28 on Canadian coal by special permission of the Commission) and measured by the rates recently prescribed by the Commission in the case of Coal Trade Association [fol. 3093] of Indiana vs. Baltimore and Ohio Railroad Company et al., Docket No. 23,922, Sub. No. 2, reported in 185 I. C. C. 225, where the Commission prescribed a scale of maximum rates for use in Central Freight Association territory where transportation conditions are practically the same as in the Ohio and Pittsburgh districts, providing for a rate of $1.55 for the distance represented by the average haul from Pittsburgh & West Virginia mines in the Pittsburgh district to Cleveland, Lorain and Huron, Ohio. The Pittsburgh & West Virginia witness also showed that the loss of its Cleveland tonnage would cause it financial distress.

Indeed, when asked the question by the Chairman of the Suspension Board, as to whether protestants were claiming that the proposed Pittsburgh & West Virginia interstate rates of $1.55 to Cleveland and Lorain and $1.65 to Huron were unreasonably low in violation of Section 1 or unduly prejudicial in violation of Section 3, the only witness produced by protestants disclaimed that the proposed rates of the Pittsburgh & West Virginia were violative of either Sections 1 or 3, claiming however that the rates were violative of Section 15.

The suspended rates having been shown to be perfectly reasonable and free from the taint of, and absolutely necessary to avoid, unjust discrimination against Pennsyl-

vania shippers, Pennsylvania coal, Pennsylvania localities, and interstate commerce, the Commission, Division 2, was not justified in suspending the tariff and the order of suspension should be promptly vacated, and the rates permitted to go in effect.

The Law Applicable to Proceedings Under Section 13 (3) and (4) Does Not Require Rate Disparities to Obtain Carrier Relief

Prior to the passage of the Transportation Act, an undue disparity in intrastate and interstate rates was considered necessary under the principles of the Shreveport Case to a valid order of the Commission requiring an increase in intrastate rates. With the passage of the Transportation [fol. 3094] Act, which imposed upon the Commission the affirmative duty to fix rates and to take other important steps necessary to the maintenance of an adequate national railway system, mere disparity in rates no longer is a prerequisite to a valid exercise of the power of the Commission over intrastate rates, for Section 13 (3) and (4) not only applies to undue preference and prejudice as between persons and localities, but to unjust discrimination against interstate commerce brought about by the effect of unduly low intrastate rates upon the carriers' revenues. Thus Section 3, under which the Shreveport case was brought, prohibited undue preference and prejudice as between persons, localities and particular descriptions of traffic, while the Transportation Act, and particularly Section 13 (3) and (4) as construed by the Supreme Court, goes much farther and also prohibits unjust discrimination against interstate commerce brought about by the effect of unduly low intrastate rates upon the carriers' revenues.

When, then, there is an undue disparity between intrastate and interstate rates, prejudiced shippers, and injured localities can secure the removal of the undue prejudice either by the invocation of Section 3 or Section 13 (3) and (4), but where the undue prejudice has been caused by unduly low intrastate rates, and for competitive reasons has been removed by the carriers, and no undue disparity in rates exists, persons and localities have no longer any interest in the rates, for their interest lies in the relationship of rates and not in the revenues produced by the rates.

But where the low intrastate rates fail to produce their fair proportionate share of the revenue necessary to the maintenance of an adequate national railway system under Section 13 (3) and (4), interstate carriers can secure the removal of the unjust discrimination against interstate commerce by showing the injurious effect of the low intrastate rates upon the carriers' revenues upon appeal to the Commission under Section 13 (3) and (4), even if there be no rate disparity affecting its shippers and localities, [fol. 3095] or the Commission can of its own volition compel the carriers to remove the unjust discrimination and prescribe not only reasonable and non-discriminatory intrastate but interstate rates as well under their maximum, minimum and absolute rate powers derived from Section 15 of the Act. This is clearly the law as laid down by the United States Supreme Court, and particularly in its recent decision in Florida v. U. S., 282 U. S. 194, where the Court cleared up many uncertainties respecting the proper application of Section 13 (3) and (4).

Thus, in the instant case, there was clearly no necessity for the Pennsylvania, Baltimore and Ohio, and New York Central to create undue prejudice against their Pennsylvania shippers and localities and unjust discrimination against interstate commerce by reducing their Ohio No. 8 rates without correspondingly reducing their Pittsburgh district rates to thereby create a rate disparity having the effect of barring Pennsylvania coal from the northern Ohio market. They could lawfully have met the Wheeling and Lake Erie competition from their Pittsburgh as well as from their Ohio No. 8 district, for the competition is just as acute from their Pittsburgh district as it is from their Ohio No. 8 district. The Pennsylvania, Baltimore and Ohio, and New York Central should have correspondingly reduced their Pittsburgh district rates and thereby avoided the undue prejudice which now exists against Pittsburgh district shippers, localities, coal, and the unjust discrimination now existing against interstate commerce, all created by their failure to do that which they could have done without affecting in the slightest their right under the statute to secure relief under Section 13 (3) and (4).

The Wheeling and Lake Erie is responsible for the reduced Ohio rates. The Commission must investigate the Ohio intrastate rates of the Wheeling and Lake Erie under Section 13 (3) and (4) upon petition of the carriers, and [fol. 3096] should the Commission determine that the Wheeling and Lake Erie's rates are so low as to unduly reduce the carriers' revenues, and therefore unjustly discriminate against interstate commerce, the Commission has full power to remove the unjust discrimination by requiring the Wheeling and Lake Erie to increase its rates so as to no longer burden interstate commerce. Thereupon, the Pennsylvania, Baltimore and Ohio, and New York Central having reduced their Ohio and Pittsburgh district rates by the compelling force of competition could have increased their Ohio and Pittsburgh district rates to the rates found by the Commission to be reasonable and non-discriminatory as to interstate commerce in the Section 13 (3) and (4) proceedings, and thus while maintaining the parity of the interstate and Ohio intrastate rates, removed the unjust discrimination against interstate commerce.

The contention made by protestants that to secure relief under Section 13 (3) and (4) they must create the very undue prejudice against their Pittsburgh district shippers, localities and coal, and the unjust discrimination against interstate commerce forbidden by the Act, by a rate disparity and thereby bar Pennsylvania coal from common Ohio markets is absurd, and if as we must assume the Commission, Division 2, suspended the Pittsburgh & West Virginia reduced rates from its Pittsburgh district under the assumption that otherwise the Pennsylvania, Baltimore and Ohio, and New York Central could not secure relief under Section 13 (3) and (4), they clearly erred and placed a construction upon the statute that defeats its very purpose. Upon reconsideration, the mistake should be corrected by the Commission by vacating the order of suspension and permitting the suspended rates to go in effect.

Wherefore, your petitioner respectfully prays that the Commission reconsider the action of the Commission, Division 2, suspending respondent's rates under its order of [fol. 3097] September 8, 1932, and promptly vacate said

order, and if necessary to reconsideration, grant petitioner an oral argument before the Commission.

Respectfully submitted, The Pittsburgh & West Virginia Railway Company, by William S. Bronson, General Attorney, 800 Southern Building, Washington, D. C.

Dated September 14, 1932.

[fol. 3098] *Duly sworn to by R. M. Paisley. Jurat omitted in printing.*

[fol. 3099] BEFORE INTERSTATE COMMERCE COMMISSION

I. & S. Docket No. 3801

COAL FROM PENNSYLVANIA TO NORTHERN OHIO

ANSWER OF PROTESTANT CARRIERS, OTHER THAN THE WHEELING & LAKE ERIE RAILWAY COMPANY, TO PETITIONS FOR RECONSIDERATION AND CANCELLATION OF ORDER OF SUSPENSION FILED BY THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY AND THE WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU

[fol. 3100] Statement

The petitions filed on behalf of respondent, The Pittsburgh & West Virginia Railway Company, and The Western Pennsylvania Coal Traffic Bureau, seek to have reconsidered and reargued before the entire Commission the matter of suspension order entered by Division 2 on September 8th, 1932. By the tariff under suspension The Pittsburgh & West Virginia Railway proposes to reduce rates on bituminous coal from its mines in the Pittsburgh District in Pennsylvania to destinations in northeastern Ohio, including such important cities as Cleveland, Lorain and Huron. The tariff was suspended on protests of various carriers and shipping interests, but only after a hearing had before the Commission's Suspension Board in which all of the affected interests directly participated.

The Petitions for Reconsideration, Reargument and Vacation of the Suspension Order Should be Denied

These petitions simply seek a summary determination of the merits of this proceeding. They allege that the sus-

pended rates are lawful. The Commission has assigned this question for hearing in Washington, D. C., on October 4th, 1932, at which time respondent and others supporting its position will be afforded the fullest opportuntiy to present such evidence and arguments as they may have in justification of the lawfulness and propriety of the suspended schedule. These protestants submit, therefore, that with the hearing of this case on the merits so soon to be had, the respondent's insistence upon vacation of the suspension order and disposition of this proceeding in the summary manner suggested is wholly uncalled for and indefensible.

[fol. 3101] To the numerous misstatements of facts, erroneous distances, etc., contained in the petitions referred to, respondents deem it unnecessary to make reply at this time, as evidence of such character presented at the hearing of this case will be dealt with by the witnesses for protestants. These protestants believe it sufficient at this time to point out that under respondent's plan for vacating the Commission's order of suspension and relying on the pending Thirteenth Section proceeding to bring about a restoration of the adjustment of coal rates, state and interstate, which was in effect prior to the reductions made by the Wheeling & Lake Erie Railway Company from its Ohio mines, the respondent would be in the position of maintaining from its mines in the Pittsburgh District a basis of rates much lower than that of these protestants from their mines in the same group. Such an arrangement would place these protestants and their shippers at a serious disadvantage in the movement and sale of coal at the important consuming centers to which the proposed rates would apply, while respondent would enjoy the twofold benefit of the increased business to inure to it from a depressed and preferential rate basis and the increases in rates which may result from the successful prosecution by these protestants of the Thirteenth Section proceedings initiated by them. These protestants feel confident that the Commission will not subject them to such hardships as would result from respondent's proposal for the establishment of a preferential set of rates from the Pittsburgh District. Voluntary reduction by protestants of their own rates from the Pittsburgh District, the alternative suggested in respondent's petition, would amount to virtual abandonment of their Thirteenth Section

[fol. 3102] case. Respondent makes a laborious effort to show that the Thirteenth Section proceeding would not be affected by the voluntary reduction of the interstate rates, but the decisions of the Supreme Court make it clear that respondent's position is wholly untenable.

Wherefore, these protestants pray that the Commission may deny the petitions of repondent and The Western Pennsylvania Coal Traffic Bureau for reargument, reconsideration and vacation of the order of suspension in this case, and that the matter may be permitted to proceed to hearing and investigation, as provided in the Commission's order of September 8, 1932.

Roy S. Kern, Agent for the Above-Named Protestants, Wabash Building, Pittsburgh, Pa.

September 23, 1932.

[fols. 3103 & 3104] BEFORE INTERSTATE COMMERCE COMMISSION

Investigation and Suspension Docket No. 3801

COAL FROM PENNSYLVANIA TO NORTHERN OHIO

ORDER—Oct. 3, 1932

It appearing, That the Commission, Division 2, by order entered September 8, 1932, in the above-entitled proceeding, entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in schedules contained in tariffs, or supplements to tariffs, enumerated and described in said order, and pending such hearing and decision thereon suspended the operation of said schedules and deferred the use of the rates, charges, regulations and practices therein stated until the 9th day of April, 1933, unless otherwise ordered by the Commission;

It further appearing, That the Pittsburgh & West Virginia Railway Company and the Western Pennsylvania Coal Traffic Bureau have filed with the Commission petitions for reconsideration and vacation or cancellation of the said order of suspension, and good cause appearing therefor;

It is ordered, That said order of September 8, 1932, in so far as it suspended the operation of the schedules enumer-

ated and described therein be, and it is hereby, vacated and set aside.

It is further ordered, That the provisions of said order of September 8, 1932, whereby the Commission entered upon a hearing concerning the lawfulness of rates, charges, regulations and practices contained in the schedules enumerated and described therein shall continue in full force and effect until the further order of the Commission.

And it is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 3105] BEFORE INTERSTATE COMMERCE COMMISSION

I. & S. Docket #3801

COAL FROM PENNSYLVANIA TO NORTHERN OHIO

Room 1030 Transportation Building,
Washington, D. C.,
Tuesday, October 4, 1932.

The above entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before Examiner Frank C. Weems

Appearances:

Mr. W. S. Bronson, No. 800 Southern Bldg., Washington, D. C., appearing for respondents.

Mr. August G. Gutheim, No. 712 Jackson Place, Washington, D. C., appearing for Western Pennsylvania Coal Traffic Bureau.

Mr. H. M. Waybright and Mr. John B. Keeler, No. 750 Koppers Bldg., Pittsburgh, Pa., appearing for New England Fuel & Transportation Company.

Mr. Ernest S. Ballard, No. 120 South LaSalle Street, Chicago, Ill., and Mr. D. F. Hurd, Chester-Twelfth Bldg., Cleveland, Ohio, appearing for Eastern Ohio Coal Operators Association.

Mr. E. J. McVann, No. 907 Fifteenth Street, N. W., [fol. 3106] Washington, D. C., appearing for property owners committee.

Mr. C. F. Krone, No. 52 Vanderbilt Avenue, New York City, N. Y., appearing for W. J. Rainey, Inc.

Mr. J. C. Hoffscot, P. O. Box 53, Pittsburgh, Pa., appearing for Lincoln Gas Coal Company.

Mr. H. D. Rhodehouse, No. 302 Republic Bldg., Youngstown, Ohio, appearing for Republic Steel Corporation.

Mr. A. S. Boden, No. 516 Empire Building, Pittsburgh, Pa., appearing for Western Pennsylvania Coal Traffic Bureau.

Mr. John L. Rogerson, Jr., No. 2024 Bridge Avenue, McKeesport, Pa., appearing in his own behalf.

Mr. L. P. Day, LaSalle Street Station, Chicago, Ill., and Mr. Charles R. Webber, B. & O. Bldg., Baltimore & Ohio, Mr. H. G. Fitzpatrick, 1st National Bank Bldg., Richmond, Va., and Mr. Guernsey Orcutt, Pennsylvania Station, Pittsburgh, Pa., appearing for protestant carriers.

Proceedings

Examiner Weems: The Interstate Commerce Commission has set for hearing at this time and place I. & S. Docket 3801, entitled Coal from Pennsylvania to Northern Ohio.

The Commission's order of September 8th suspended the operation of the schedules. By order dated October 3rd the Commission vacated that part of its order of September 8th in so far as it suspended the operation of the schedules, namely, Supplement No. 40 to Pittsburgh & West Virginia [fol. 3107] Railway Company's I. C. C. No. 225. To the extent indicated the order of September 8th has been vacated and set aside.

The Commission will now receive evidence bearing upon the question of the propriety of the reduced rates.

The respondents may now proceed.

Who appears for respondents?

Mr. Bronson: W. S. Bronson, General Attorney, Pittsburgh & West Virginia Railway Company, No. 800 Southern Bldg., Washington, D. C.

Examiner Weems: Are there any other appearances for respondents?

(No response.)

Examiner Weems: Who appears in support of the schedules?

Mr. Gutheim: August G. Gutheim, No. 712 Jackson Place, Washington, D. C., and Mr. A. S. Boden, Empire Bldg., Pittsburgh, Pa., appearing for the Western Pennsylvania Coal Traffic Bureau, in support of the position of the respondents.

Mr. Keeler: John B. Keeler and H. M. Waybright. Our position is the same as that of the Western Pennsylvania Coal Bureau.

Examiner Weems: Who appears for protestants?

Mr. Rhodehouse: Mr. Examiner, H. D. Rhodehouse for the Republic Steel Corporation. I don't know whether our position is in favor of or opposed to the positions stated. [We are interested in the rates to Canton and Massillon, [fol. 3108] but we will not know until the hearing proceeds just exactly what our position is.

Examiner Weems: Are there any other appearances for protestants?

Mr. Orcutt: L. P. Day, Charles R. Webber, H. G. Fitzpatrick and Guernsey Orcutt for protestants.

Examiner Weems: Are there any other appearances for protestants?

Mr. Ballard: E. S. Ballard and D. F. Hurd for the Eastern Ohio Coal Operators Association. We were a protestant at the time these tariffs were filed and asked for their suspension. Now that the suspension has been vacated and the only remaining issue is the general one of the lawfulness of the existing rates, I am not at all certain that our position will be the same as it was originally.

Examiner Weems: Are there any other appearances?

Mr. McVann: E. J. McVann, representing the Property Owners Committee, composed of coal operators in Southern West Virginia, Kentucky, Virginia, and Tennessee.

I do not know just what you may term us, but perhaps interveners would be the designation.

Examiner Weems: Are there any other appearances?

(No response.)

Examiner Weems: I hear none. Respondents may proceed.

Mr. Orcutt: Mr. Examiner, you will appreciate, I am [fol. 3109] sure, that none of the protestants knew any-

thing about this order until ten o'clock this morning, when we convened in the hearing room. It was an entire surprise to us and it presents a situation that we had not considered in any way in preparing our case. There is a serious question just at this time whether we would be justified in going ahead and putting in our case under the circumstances. Not being entirely sure of that and not having an opportunity to consider it fully we do not wish to force the respondents to put in other testimony and then we withhold ours. Under the circumstances, Mr. Examiner, I think the Examiner and the Commission will appreciate the necessity of a little time in which we can consider this matter and present some of the new questions to our executives, who, of course, will have to determine it. For that reason the protesting carriers ask that the matter of this hearing be postponed for 30 days. I understand the respondents will offer no objection to that but will concur in it.

Mr. Bronson: Not only will the respondents not offer any objection but I think, as Mr. Orcutt says, the protestants were taken by surprise, and it seems to me their entire case is changed. They have a Section 13 petition now before the Commission covering the same situation exactly, and it may be that they will desire to consolidate this matter with their Section 13 matter. I do think they should be given [fol. 3110] time to do it. Therefore we concur in Mr. Orcutt's request that the hearing be postponed 30 days.

Mr. Ballard: I join in that, Mr. Examiner.

Mr. Gutheim: We offer no objection.

Mr. Orcutt: The matter of haste in so far as the respondents are concerned, is not now here.

Mr. Bronson: That is the idea exactly.

Examiner Weems: Are you prepared to offer evidence at this time, Mr. Bronson? The commission has set this case down for hearing.

Mr. Bronson: Of course, my evidence would go in under the basis of the suspended tariffs, but I really think I should have time to reconstruct the evidence, probably eliminating a great deal that I have had prepared, and confining it more particularly to the reasonableness of the rates. I would like to have time to go over my evidence and readjust it to exactly fit this case, and probably fit the Section 13 case at the same time. I do believe we will save a lot of time by doing that. You have a 13th section peti-

tion before you, and I think you will save a great deal of time if this case and that case are consolidated, because they cover exactly the same ground, except this case covers only Cleveland, Lorain and Huron.

Mr. Ballard: May I make this suggestion, your Honor? It seems perfectly obvious that Mr. Bronson will have an [fol. 3111] opportunity to meet the issues which still remain in this proceeding in the 13th section proceeding. Nobody can take that away from him. He will have that in due course when the 13th section case comes on for hearing. Mr. Orcutt will also have the opportunity, and all of the rest of us will, because such issues as now remain here will necessarily be presented as a part of a much broader issue which will be involved in that case. It does not seem to me that it is orderly, wise or necessary to go ahead here and try a little fragment of a larger case which will come on later.

Mr. Bronson: We would not be willing to put our evidence in in this case and then have the protestants go over until some future time. We think the whole case should be put in at one time. Therefore, I do not see what could be done other than to postpone the case.

Examiner Weems: Gentlemen, under the circumstances, and good reasons appearing therefor, this hearing is continued to November 9, 1932, at the offices of the Interstate Commerce Commission.

(Thereupon, at 11:00 o'clock a.m., an adjournment was taken to Wednesday, November 9, 1932, at 10 o'clock a.m.)

[fol. 3112] PETITIONERS' EXHIBIT NO. 3

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Petition of the Pittsburgh & West Virginia Railway Company, filed November 10, 1932,

Protest of Leech Farm Coal Company filed November 15, 1932,

Protest of The North American Coal Corporation filed November 16, 1932,

Protest of Clyde E. Speer Coal Co., Inc., filed November 17, 1932,

Reply of the Wheeling & Lake Erie Railway Company filed November 18, 1932,

Protest of the Duquesne Coal & Coke Company filed November 19, 1932,

Answer of certain carriers in Central Freight Association Territory filed November 19, 1932,

Order of the Commission entered November 29, 1932, in Investigation and Suspension Docket No. 3833, Coal from Pennsylvania to Northern Ohio (2), the originals of which are now on file and of record in the office of this Commission.

I do further certify that the papers and documents above referred to constitute a true copy of the record (except correspondence) in Investigation and Suspension [fol. 3113] Docket No. 3833, Coal from Pennsylvania to Northern Ohio (2), as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A.D. 1933. George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3114] BEFORE INTERSTATE COMMERCE COMMISSION

PETITION OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY TO SUSPEND THE OPERATION OF INCREASED INTERSTATE RATES ON PENNSYLVANIA COAL TO NORTHERN OHIO NECESSITATED BY THE CANCELLATION OF THE CONCURRENCES OF THE WHEELING & LAKE ERIE RAILWAY COMPANY AND THE LORAIN & WEST VIRGINIA RAILWAY COMPANY.—Filed Nov. 10, '32.

Comes now your petitioner, The Pittsburgh & West Virginia Railway Company, and respectfully petitions the Commission to (1) suspend the rates, effective December 27, 1932 contained in Supplement No. 45 to The Pittsburgh & West Virginia Railway Company's Tariff I. C. C. No. 225, publishing increased interstate rates on bituminous coal from mines on The Pittsburgh & West Virginia Railway in the Pittsburgh District to Cleveland, and Huron,

Ohio and intermediate points via The Wheeling & Lake Erie Railway and to Lorain, Ohio and intermediate points via The Wheeling & Lake Erie Railway and its subsidiary The Lorain & West Virginia Railway; (2) suspend The Wheeling & Lake Erie Railway Company's new concurrence form FX 4 No. 23 and The Lorain & West Virginia Railway Company's new concurrence FX 4 No. 24, both effective December 27, 1932 which restricted concurrences are substituted for general concurrences form FX 3 No. 594 and FX 3 No. 596 respectively and have the effect of compelling The Pittsburgh & West Virginia Railway Company against its will to publish increased rates which are relatively unreasonable in violation of Section 1 and unjustly discriminatory against Interstate Commerce and unduly prejudicial to Pennsylvania interstate coal, Pennsylvania localities and Pennsylvania shippers and unduly preferential to Ohio intrastate coal, Ohio localities and Ohio shippers in violation of Section 3 & 13 of the Interstate Commerce Act. (3) Assign such suspension proceedings for hearing at Columbus December 5, 1932 in connection with I. & S. Docket 3801, coal from Pennsylvania to Northern Ohio, which proceedings involve the same rates and (4) [fol. 3115] upon determination of the I. & S. proceedings order petitioner to cancel the proposed rates and order The Wheeling & Lake Erie Railway Company and The Lorain & West Virginia Railway Company to cancel the new concurrences.

In support of said petition your petitioner respectfully shows:

I

That, The Pittsburgh & West Virginia Railway Company, The Wheeling & Lake Erie Railway Company and the Lorain & West Virginia Railway Company are common carriers subject to the Interstate Commerce Act engaged in the transportation of bituminous coal in interstate commerce from mines in the Pittsburgh District in the State of Pennsylvania and in intrastate commerce from mines in the No. 8 District in the State of Ohio to Cleveland, Ohio, Lorain, Ohio, and Huron, Ohio, and intermediate points.

II

That, prior to August 1, 1932 The Pittsburgh & West Virginia Railway Company published with the general con-

currences of The Wheeling & Lake Erie Railway Company and The Lorain and West Virginia Railway Company, interstate rates from mines on its line in the Pittsburgh District of $1.84 per net ton and intrastate rates from mines on its line in the No. 8 District of Ohio of $1.74 per net ton to Cleveland, Lorain and Huron, Ohio, and intermediate points. Concurrently The Wheeling & Lake Erie Railway Company published rates of $1.74 for the transportation of bituminous coal in Ohio intrastate commerce from mines on its line in the No. 8 District of Ohio to Cleveland and Huron, Ohio, and intermediate points and to Lorain, Ohio and intermediate points participated in by its subsidiary The Lorain and West Virginia Railway Company.

III

That, effective August 1, 1932 The Wheeling & Lake Erie Railway Company with the approval of the Public Utilities Commission of Ohio published reduced Ohio intrastate [fol. 3116] rates on coal from mines on its line in the No. 8 District of Ohio to Cleveland and Lorain, Ohio and intermediate points of $1.45 and to Huron, Ohio and intermediate points of $1.55

IV

That, shortly thereafter the Pennsylvania Railroad Company, New York Central Railroad Company, Baltimore & Ohio Railroad Company and The Pittsburgh & West Virginia Railway Company as a competitive measure published from their mines in the No. 8 District of Ohio to Cleveland and Lorain, Ohio and intermediate points the reduced rate of $1.45 and to Huron, Ohio and intermediate points the reduced rate of $1.55.

V

That, the Pennsylvania Railroad Company, New York Central Railroad Company and Baltimore & Ohio Railroad Company did not publish corresponding reduced interstate rates from their Pittsburgh District mines and protested the tariff of The Pittsburgh & West Virginia Railway Company which restored the disrupted rate relationship by publishing interstate rates effective September 9, 1932 from its Pittsburgh District mines of $1.55

to Cleveland and Lorain, Ohio and intermediate points and $1.65 to Huron, Ohio and intermediate points, ten (10) cents higher than the reduced Ohio No. 8 rates.

VI

That, the Commission by Division 2, suspended The Pittsburgh & West Virginia Railway Company's interstate tariff but upon reconsideration while continuing the investigation of I. & S. Docket No. 3801 it vacated the suspension portion of the order and the reduced interstate rates from mines on The Pittsburgh & West Virginia Railway in the Pittsburgh District went into effect October 5, 1932.

VII

That, thereupon The Wheeling & Lake Erie Railway Company and its subsidiary The Lorain and West Virginia Railway Company cancelled their general concurrences form FX 3 Nos. 594 and 596 respectively under the [fol. 3117] authority of which The Pittsburgh & West Virginia Railroad Company published the reduced interstate rates from the Pittsburgh District reasonably related to the reduced intrastate rates from the Ohio No. 8 District and filed wih the Commission limited concurrences form FX 4 Nos. 23 and 24 which restricted the authority of The Pittsburgh & West Virginia Railway Company to publish rates for the transportation of interstate coal by requiring among others the publication of interstate rates from the Pittsburgh District to Cleveland, Lorain and Huron, Ohio, of $1.84, the rates in effect prior to October 5, 1932.

VIII

That, for many years prior to August 1, 1932, except for short intervals, the rates from the mines in the Pittsburgh and Ohio No. 8 Districts were interrelated by a 10¢ differential Ohio No. 8 under Pittsburgh and the reductions in the Pittsburgh District rates made by The Pittsburgh & West Virginia Railway Company effective October 5, 1932 merely restored the long established 10¢ differential which the Commission itself had approved in the Ohio-Michigan Coal Cases 80 I. C. C. 663.

IX

That, the act of The Pittsburgh & West Virginia Railway Company in reducing its Pittsburgh District rates to thereby restore the 10¢ differential, removed effective October 5, the unjust discrimination against interstate commerce in favor of Ohio intrastate commerce and the undue prejudice against Pennsylvania coal, Pennsylvania localities and Pennsylvania shippers which had existed in favor of Ohio coal, Ohio localities and Ohio shippers between August 1, and October 5, 1932 created by the Act of The Wheeling & Lake Erie Railway Company.

X

That the act of The Wheeling & Lake Erie Railway Company and its subsidiary The Lorain and West Virginia Railway Company in cancelling their general concurrences [fol. 3118] form FX 3 and substituting restricted concurrences form FX 4 forced The Pittsburgh & West Virginia Railway Company against its will to republish the former relatively unreasonable, unjust, discriminatory and unduly preferential Cleveland, Lorain and Huron rates and unless the increased rates are suspended by the Commission as prayed for in this petition, effective December 27, 1932, The Pittsburgh & West Virginia Railway Company's published rates to the Cleveland and Huron group points via The Wheeling & Lake Erie Railway Company and to the Lorain, Ohio group points via The Wheeling & Lake Erie Railway Company and The Lorain and West Virginia Railway Company will be unreasonable in relation to the rates published by The Wheeling & Lake Erie Railway Company from its Ohio No. 8 mines to the Cleveland and Huron, Ohio, group points and The Wheeling & Lake Erie Railway Company and The Lorain and West Virginia Railway Company to the Lorain, Ohio group points in violation of Section 1 and unjustly discriminatory against interstate commerce and in favor of Ohio intrastate commerce and unduly prejudicial against Pennsylvania coal, localities and shippers and unduly preferential to Ohio coal, localities and shippers in violation of Sections 3 and 13 of the Interstate Commerce Act.

XI

That, between August 1, 1932 and October 5, 1932 Pennsylvania coal produced at mines of The Pittsburgh & West

Virginia Railway Company was practically barred from the steam and domestic market in Northeastern Ohio. Since the restoration of the differential effective October 5, 1932 much of the lost tonnage has been regained but if the former relatively unreasonable and unjust discriminatory and unduly preferential rates are restored effective December 27, 1932 as now contemplated by The Wheeling & Lake Erie Railway Company and The Lorain and West Virginia Railway Company, The Pittsburgh & West Virginia Rail-
[fol. 3119] way Company's Cleveland, Lorain and Huron, Ohio tonnage for steam and domestic purposes will again practically disappear. Failure of the Commission therefore to suspend the proposed tariff will practically bar coal produced in the State of Pennsylvania from the Northern Ohio market, a condition which is antagonistic to the basic principles of the Interstate Commerce Act which aims to preserve the free and unobstructed movement of interstate commerce as well as of intrastate commerce.

XII

That, in other cases, notably I. & S. Docket 3114, Cyanamid and Crude Cyanamid from Niagara Falls, Ontario to Eastern Trunk Lines, New England and Central Freight Association points and Virginia Cities, 155 I. C. C. 488, where a similar situation was presented, the Commission held that it had power in connection with an I. & S. Docket to suspend new concurrences in order to keep in effect the existing concurrences pending determination of the I. & S. Proceedings.

XIII

That, the increased rates if permitted to go into effect will deprive The Pittsburgh & West Virginia Railway Company of a substantial amount of revenue which it now enjoys on Cleveland, Lorain and Huron coal originating in the Pittsburgh District, revenue greatly needed during the depression and which it can ill afford to lose. Failure to suspend the increased rates will also seriously injure shippers located on petitioner's line in the State of Pennsylvania who now enjoy a substantial steam and domestic market in Cleveland, Lorain and Huron, by depriving them of their market in that territory for steam and domestic coal and which in turn will neeessarily result in the loss of

other markets for prepared coal. Lastly, failure to suspend the increased rates will enable The Wheeling & Lake Erie Railway Company to accomplish the purpose it had in mind when it voluntarily reduced its Ohio No. 8 rates and thereby so widen the long established differential of [fol. 3120] 10c Ohio No. 8 under Pittsburgh, as to practically drive Pennsylvania coal out of the Northern Ohio market for steam and domestic purposes.

XIV

That rule 9 (k) of Tariff Circular 20 prohibits changes in suspended rates pending determination of the I. & S. proceedings, and since the Commission has under investigation in I. & S. 3801, set for hearing December 5, at Columbus, Ohio, the very rates of $1.55 to Cleveland and Lorain and $1.65 to Huron, which supplement No. 45 to I. C. C. 225 proposes to increase to $1.84, the spirit if not the letter of the said rule requires that the $1.55 rate to Cleveland and Lorain and the $1.65 rate to Huron be not changed pending determination of I. & S. 3801, and this in turn demands the immediate suspension of the increased $1.84 rate named in Supplement No. 45 to I. C. C. 225 without regard to the usual 10-day period named in Rule XIX Suspension of Tariff Schedules, Rules of Practice before the Commission.

Prayer

Wherefore your petitioner prays that the Commission will (1) suspend the operation of the proposed increased rates named in Supplement No. 45 to The Pittsburgh & West Virginia Railway Company's tariff I. C. C. 225; (2) suspend the new and restricted concurrences of The Wheeling & Lake Erie Railway Company and The Lorain & West Virginia Railway Company; (3) enter upon an investigation into the reasonableness and propriety of the increased rates published in the suspended tariff and the legality of the new and restricted concurrences, along with I. & S. Docket No. 3801, set for hearing at Columbus, Ohio, December 5, 1932; and (4) after due determination require petitioner to cancel the proposed increased rates and The Wheeling and Lake Erie Railway Company and The

Lorain & West Virginia Railway Company to cancel the new and restricted concurrences.

[fol. 3121] Respectfully submitted, The Pittsburgh & West Virginia Railway Company, by R. M. Paisley, General Freight Agent. William S. Bronson, General Attorney, 800 Southern Building, Washington, D. C.

Dated at Washington, D. C., November 10, 1932.

Duly sworn to by R. M. Paisley. Jurat omitted in printing.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof properly addressed to Andrew P. Martin, General Solicitor, The Wheeling & Lake Erie Railway Company and the Lorain & West Virginia Railway Company, Union Trust Building, Cleveland, Ohio.

Dated at Washington, D. C., this 10th day of November, 1932.

William S. Bronson, Counsel for The Pittsburgh & West Virginia Railway Company.

[fol. 3122] PROTEST—Filed Nov. 16, '32

Leech Farm Coal Company

General Office: First National Bank Building, Oakdale, Pa.

Paxton Mine, Avella, Pa.

Telephone 45. Telephone 39

Pittsburgh, Pa.,
November 15, 1932.

George B. McGinty, Esq., Secretary, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: The Pittsburgh & West Virginia Railway has furnished this Company with a copy of Supplement 45 to I. C. C. 225, effective December 27, 1932, publishing rates on bituminous coal from its Pittsburgh district mines to Cleveland and other northern Ohio points increased from $1.55 to $1.84 per net ton.

We are informed that the Pittsburgh & West Virginia and other roads serving the adjoining Ohio No. 8 district do not propose to correspondingly increase their Ohio No. 8 rates; and the proposed increase in the Pittsburgh rates if permitted to go into effect will have the effect of destroying our markets in Cleveland and northern Ohio for the coal produced at our Paxton mine, located at Avella, Penna., on the Pittsburgh & West Virginia Railway, as our coal can not compete with Ohio coal at freight rates more than 10 cents higher than Ohio rates, and indeed it is difficult for us to compete under any differential.

Our coal is used only for steam and domestic purposes and to market our coal in competition with Ohio No. 8 coal our Pittsburgh rates must closely approximate the Ohio No. 8 rates. The proposed increases in our Cleveland rates from $1.55 to $1.84 will increase our present differential from 10 cents to 29 cents in favor of Ohio, a difference which will be impossible for us to absorb in the delivered price of our coal rate in Cleveland and northern Ohio [fol. 3123]markets.

The coal industry in Pennsylvania is at present in a deplorably depressed condition, and we ought not to be asked to bear further burdens while the railroads are fighting over their rate problems; and we respectfully protest and, pending investigation, ask that the Commission suspend the Pittsburgh & West Virginia tariff and permit us to continue the use of the 10-cent differential from out Pittsburgh mines over Ohio No. 8 mines, which we have had for many years.

Yours truly, Leech Farm Coal Company, J. K. Robb, Treasurer.

[fol. 3124] PROTEST AGAINST AND REQUEST TO SUSPEND THE INCREASED RATES OF THE PITTSBURGH & WEST VIRGINIA RAILWAY CO. EFFECTIVE DECEMBER 27, 1932, FROM MINES ON ITS LINES TO CLEVELAND, O., LORAIN, O., AND HURON, O. —Filed Nov. 16, 1932.

Mr. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

DEAR SIR: We have received from the General Freight Agent of The Pittsburgh & West Virginia Railway Com-

pany supplement No. 45 to its tariff I. C. C. No. 225, effective December 27, 1932, increasing the present bituminous coal rates of $1.55 to Cleveland and Lorain and $1.65 to Huron, O., to $1.84, the rates formerly in effect before reductions in Ohio No. 8 rates were made by The Wheeling & Lake Erie Railway Company on August 1st, last.

The North American Coal Corporation is the exclusive selling agent for the coal produced at the mines of the Pittsburgh Terminal Coal Corporation, owning and operating five (5) mines in the Avella and West Side Belt portions of the Pittsburgh District served exclusively by The Pittsburgh & West Virginia Railway Company. Prior to August 1, last, on which date The Wheeling & Lake Erie Railway Company reduced its rates from the Ohio No. 8 District from $1.74 to $1.45 to Cleveland and Lorain and $1.55 to Huron, this company had for years enjoyed a substantial market for its slack coal in Cleveland, Lorain and Huron where slack coal is largely used for industrial purposes and also a fair market for its prepared coal used for domestic purposes, and was able to market approximately 200,000 tons of this coal annually in competition with Ohio No. 8 coal by reason of a differential 10c higher from the [fol. 3125] Pittsburgh District than from the Ohio No. 8 District.

When The Wheeling & Lake Erie Railway Company reduced its rates effective August 1st, to $1.55 to Cleveland and Lorain and $1.65 to Huron, O., and pending corresponding reductions in the Pittsburgh District rates by The Pittsburgh & West Virginia Railway Company effective October 5th, 1932 by permission of your Honorable Commission, the sale of protestant's slack coal in the Cleveland, Lorain and Huron markets fell off to practically nothing and the sale of domestic coal was greatly reduced.

But when The Pittsburgh & West Virginia Railway Company's reduced rates went into effect October 5th, and the 10¢ differential was restored, this company was able to regain much of its lost market which it again must lose unless the Commission exercises its powers by suspending the tariff of The Pittsburgh & West Virginia Railway Company publishing the increased rates, for the experience during the months of August and September has conclusively demonstrated the fact that Pittsburgh coal cannot be sold in the steam and domestic market of North-

ern Ohio under a differential in excess of 10¢ over Ohio No. 8.

The loss of the Northern Ohio coal market would result in a serious loss financially to the protestant, which it could ill afford to stand during this period of extreme depression, particularly in the coal trade, and for the reasons stated, we respectfully ask that the tariff of The Pittsburgh & West Virginia Railway Company publishing the increased rates, which we are advised was made necessary by the refusal of The Wheeling & Lake Erie Railway Company, serving the Ohio No. 8 field, to longer participate in rates from the Pittsburgh District related to the Ohio No. 8 rates by the long standing differential of 10¢, be [fol. 3125a] suspended and not permitted to go into effect on December 27th, 1932 and that the Commission enter into an investigation concerning the reasonableness and propriety of the proposed $1.84 rate as related to the $1.55 rate to Cleveland and Lorain and $1.65 rate to Huron now published by The Wheeling & Lake Erie Railway Company from its Ohio No. 8 mines and unless The Pittsburgh & West Virginia Railway Company can show sound reasons other than the mere refusal of The Wheeling & Lake Erie Railway Company to participate in the present rates that the Commission order the suspended rates cancelled.

Yours very truly, The North American Coal Corporation. —— Larsen, Secretary.

(Here follows protest, side folio 3126)

Protest filed - NOV 17 '32 609362

CLYDE E. SPEER COAL CO. INC.

MINERS AND SHIPPERS

SUITE 1334 GULF BUILDING

PITTSBURGH, PA. November 16, 1932

Interstate Commerce Commission
NOV 17 1932
BOARD OF

OPERATIONS
PENOBSCOT MINE
EDNA NO. 1 MINE
CREIGHTON MINE
LINDLEY MINE
JEFFERSON MINE

BUFFALO OFFICE
1123 WALBRIDGE BLDG.
BUFFALO, NEW YORK
PHONE - WASH. 7917

TELEPHONES
ATLANTIC 4351-2
5395-6

George B. McGinty, Esq., Secretary,
Interstate Commerce Commission,
Washington, D.C.

Subject: Increased Rates in Pittsburgh & West Virginia Supplement No.45 to I.C.C. 225 effective December 27, 1932

Dear Sir:

We are operators of two coal mines producing 33,000 tons of coal monthly. Our PENOBSCOT Mine is located at Penowa, Pa. and JEFFERSON Mine at Avella, Pa. on the Pittsburgh & West Virginia Railway in the Pittsburgh rate district.

Since the 5th of October, when the Pittsburgh & West Virginia Railway reduced its Pittsburgh district rate to preserve our 10¢ a ton differential over the Ohio #8 rates, we have had a rate of $1.55 per net ton to Cleveland against a rate of $1.45 enjoyed by our Ohio #8 competitors.

We are now in receipt of a copy of Supplement No.45 to the Pittsburgh & West Virginia Railway tariff, I.C.C. No.225, in which that Company proposes to increase the Cleveland rate to $1.84, which was the rate we formerly paid when the Ohio rate was $1.74.

Our Cleveland, Ohio office has developed a considerable market for our coal for domestic and steam purposes in the Cleveland territory, and if the proposed rate is permitted to go into effect, this market will be lost to us. You can readily understand that we will not be able to sell our coal in Cleveland on basis of $1.84 rate against an Ohio #8 rate of $1.45.

This is a simple statement of our situation, and as we feel justly entitled to sell our coal in the Cleveland market, we earnestly protest and respectfully ask the Commission to suspend the proposed increased rates, and after due investigation order their cancellation.

Yours truly,

CLYDE E. SPEER COAL COMPANY, INC.

Clyde E. Speer
President

CES:TK

19584

PROTEST FILED NOV. 17, '32

[fol. 3127] BEFORE INTERSTATE COMMERCE COMMISSION

In the Matter of SUPPLEMENT NO. 45 TO THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY'S FREIGHT TARIFF, I. C. C. No. 225

REPLY OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY TO THE PETITION OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY FOR SUSPENSION—Filed Nov. 18, '32

[fol. 3128] To the Interstate Commerce Commission:

The Wheeling and Lake Erie Railway Company (hereinafter referred to as the Wheeling), for itself and its subsidiary The Lorain & West Virginia Railway Company (hereinafter referred to as the Lorain), replies as follows to the petition of The Pittsburgh & West Virginia Railway Company to suspend, (a) increased interstate rates from mines on its lines in the Pittsburgh District to points in northern Ohio on the lines of the Wheeling and the Lorain published in Supplement No. 45 to The Pittsburgh & West Virginia Railway Company's Tariff I. C. C. No. 225, effective December 27th, 1932, and (b) the Wheeling's concurrence form FX4 No. 23, and the Lorain's concurrence form FX4 No. 24, both effective December 27th, 1932:

1. It admits the allegations contained in Sections I, II, IV, and VI of said petition.

2. As to the allegations contained in Section III of said petition, it admits that, effective August 1, 1932, with the special permission of the Public Utilities Commission of [fol. 3129]. Ohio, it published on short notice reduced Ohio intrastate rates from mines on its line in the Ohio No. 8 District to Cleveland and Lorain, Ohio, and intermediate points, of $1.45 per net ton, and to Huron, Ohio, and intermediate points, of $1.55 per net ton.

3. As to the allegations contained in Section V of said petition, it admits that the Pennsylvania Railroad Company, The New York Central Railroad Company, and The Baltimore & Ohio Railroad Company did not publish reduced interstate rates from their Pittsburgh District mines to said points of destination in northern Ohio, and pro-

tested against the tariff of The Pittsburgh & West Virginia Railway Company which published interstate rates, effective September 9th, 1932, from its Pittsburgh District mines of $1.55 to Cleveland and Lorain, Ohio, and intermediate points, and of $1.65 to Huron, Ohio, and intermediate points.

Further answering said Section V of said petition, the Wheeling alleges that on or about August 4, 1932, it received unofficial advice that The Pittsburgh & West Virginia Railway Company proposed to publish reduced rates on bituminous coal from mines on its lines in the Pittsburgh District to points on the lines of the Wheeling and the Lorain, whereupon the Wheeling promptly advised The Pittsburgh & West Virginia Railway Company by telegram and letter that it did not consent to, or concur in, the publication of such reduced rates. Nevertheless, under the guise of general authority which it claimed to possess by virtue of the Wheeling's general concurrence No. 594, and the Lorain's general concurrence No. 596, and without further notice to the Wheeling, The Pittsburgh & West Virginia Railway Company, as of August 9, 1932, filed its Supplement No. 40 to its freight tariff I. C. C. No. 225, naming such reduced rates effective September 9, 1932.
[fol. 3130] On or about August 12, 1932, The Wheeling and Lake Erie Railway Company filed with the Interstate Commerce Commission its request for suspension of said reduced rates of The Pittsburgh & West Virginia Railway Company upon the ground that the latter company should not be permitted to use the Wheeling's general concurrence for the publication of such reduced rates over the prior protest and objection of the Wheeling; and, following a hearing before the Suspension Board of the Interstate Commerce Commission, said rates were suspended by the order of the Commission on September 8, 1932 in its Investigation and Suspension Docket No. 3801. Thereupon the Commission entered upon an investigation of said rates as provided in said order.

4. In reply to the allegations of Section VII of said petition, the Wheeling alleges that on or about October 3, 1932, the Interstate Commerce Commission issued its order in its Investigation and Suspension Docket No. 3801, vacating and setting aside its order of September 8, 1932 in said

docket, in so far as it suspended the operation of said reduced rates published in Supplement No. 40 to freight tariff I. C. C. No. 225 of The Pittsburgh & West Virginia Railway Company, thereby permitting The Pittsburgh & West Virginia Railway Company to re-establish the unauthorized rates from mines on its lines in the Pittsburgh District to points on the lines of the Wheeling and the Lorain in northern Ohio. The effect of the Commission's order of October 3, 1932, was to withdraw the protection which the suspension of said rates afforded the Wheeling against the abuse of its general concurrence by The Pittsburgh & West Virginia Railway Company through the publication of unauthorized rates. The Wheeling was there-[fol. 3131] fore compelled, in order to protect itself against the abuse of its general concurrence, to cancel its general concurrence Form FX3 No. 594, and the Lorain's general concurrence Form FX3 No. 596, and to substitute therefor limited concurrence form FX4 Nos. 23 and 24 requiring, inter alia, the publication of interstate rates from mines on the lines of The Pittsburgh & West Virginia Railway Company in the Pittsburgh District to Cleveland, Lorain, and Huron, Ohio, of $1.84 per net ton, which was the rate in effect prior to the time when The Pittsburgh & West Virginia Railway Company, over the protest and objection of the Wheeling, published unauthorized reduced rates to said destinations from its mines in the Pittsburgh District.

Further answering said Section VII, the Wheeling denies that the said unauthorized rates published by The Pittsburgh & West Virginia Railway Company were reasonably related to the reduced intrastate rates from the Ohio No. 8 District to said points of destination.

5. As to the allegations of Section VIII of said petition, the Wheeling admits that for many years prior to August 1, 1932, rates from mines in the Pittsburgh District were differentially higher by 10 cents a ton to Cleveland, Ohio, than rates from the Ohio No. 8 District, but it denies that the Interstate Commerce Commission approved said ten cent differential in the Ohio-Michigan Coal Cases, 80 I. C. C. 663.

6. In reply to the allegations of Section IX of said petition, it denies that it has created any unjust discrimination against interstate commerce in favor of Ohio intrastate

commerce, or any undue preference against Pennsylvania [fol. 3132] coal, or Pennsylvania localities, or shippers of Pennsylvania, in favor of Ohio coal, or Ohio localities, or shippers of Ohio, either during the period of August 1 to October 5, 1932, or at any other period.

Further answering the allegations of said Section IX, the Wheeling alleges that the ten-cent differential of the Pittsburgh District over the Ohio No. 8 District to Cleveland which existed prior to August 1, 1932 was unduly and unreasonably low, and unduly prejudicial to shippers and localities in the Ohio No. 8 Coal District, and unduly preferential to shippers and localities in the Pittsburgh Coal District.

7. As to the allegations contained in Section X of said petition, the Wheeling alleges that its purpose in cancelling general concurrence forms FX3, and substituting limited concurrence forms FX4, was to restore the level of rates from mines in the Pittsburgh District via the lines of the Wheeling and the Lorain to said destinations in northern Ohio, which existed prior to the unauthorized publication of reduced rates by The Pittsburgh & West Virginia Railway Company under the guise of authority conferred upon it by said general conferences. It denies that the rates published in The Pittsburgh & West Virginia Railway Company's Supplement No. 45 to its freight tariff I. C. C. No. 225, are, or will be, relatively unreasonable, or unjustly discriminatory, or unduly preferential, or that they violate Section 1, or Section 3, or Section 13 of the Interstate Commerce Act.

8. For want of information it can neither admit nor deny the allegations contained in the first two sentences of Section XI of said petition.

It denies the allegations contained in the third sentence [fol. 3133] of Section XI. It alleges that the Pittsburgh and Connellsville Districts of western Pennsylvania produce and ship to Cleveland and Lorain, Ohio, large quantities of high volatile coal for by-product coking purposes, which cannot be supplied from coal districts in the State of Ohio, and which will, therefore, continue to move under the pre-existing rates of $1.84 per net ton, and $1.90 per net ton irrespective of the level of the Ohio intrastate rates. Thus, during the four-year period, 1927 to 1930 inclusive,

the total amount of high volatile by-product coking coal received at Cleveland, Ohio was 9,086,361 tons, or approximately 30.28% of the bituminous coal received at that point during said period. During the same period the total amount of high volatile by-product coking and gas coal received at Lorain, Ohio was 4,050,646 tons, or approximately 48.31% of the bituminous coal received at that point during said period. 8,195,283 tons of this special purpose coal was produced in the Pittsburgh and Connellsville Districts of western Pennsylvania, and all of this special purpose coal could have been produced in said districts. None of it could have been produced in the Ohio Districts.

It is, therefore, apparent that failure of the Commission to suspend the proposed tariff will not bar coal produced in the State of Pennsylvania from the northern Ohio market, as alleged in said Section XI.

9. As to the allegations of Section XII of said petition, Wheeling refers to the report in Cyanamid and Crude Cyanide From Niagara Falls, Ontario, to Eastern Trunk Line, New England, and C. F. A. Points and Virginia Cities, 155 I. C. C. 488 for a correct statement of the holding of the Commission as to its power to suspend concurrences under the facts disclosed in said report.

[fol. 3134] 10. As to the allegations contained in Section XIII of said petition, it denies that the effect of the increased rates will deprive The Pittsburgh & West Virginia Railway Company of any substantial revenue on coal originating in the Pittsburgh District destined to Lorain or Huron, Ohio, or will seriously injure shippers located on The Pittsburgh & West Virginia Railway Company's lines in respect to coal shipped from their mines to Lorain or Huron, Ohio.

It denies that its purpose in voluntarily reducing its Ohio No. 8 rates was to drive Pennsylvania coal out of northern Ohio markets for steam and domestic purposes.

For want of information it can neither admit nor deny the remaining allegations of said Section XIII.

11. That the provisions of Rule 9 (k) of Tariff Circular 20 of the Interstate Commerce Commission do not require the maintenance of the existing rates from the Pittsburgh

& West Virginia mines in the Pittsburgh District to northern Ohio destinations, as alleged in Section XIV of said petition. The pertinent portion of said Rule 9 (k) reads as follows:

"A suspended rate, charge, classification, rule, regulation, or practice may not be changed or withdrawn or the effective date thereof further deferred except by order or special permission of the commission, nor may any change be made in a rate, charge, classification, rule, regulation, or practice which is continued in effect as a result of such suspension except under order or special permission of the commission."

It will be noted that the provision applies only to changes of rates which are under suspension. The reduced rates from Pittsburgh & West Virginia mines in the Pittsburgh District to northern Ohio destinations are no longer under suspension, as they became effective on October 5, 1932, [fol. 3135] as a result of the Commission's order of October 3, 1932, in its Investigation and Suspension Docket 3801. The rule therefore does not apply.

The provisions of said order of October 3, 1932, and of the order of September 8, 1932, in said Investigation and Suspension Docket No. 3801 clearly show that the Wheeling is not prohibited from causing changes to be made in said reduced interstate rates, which have become effective. In the earlier order it is provided:

"That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission."

The period of suspension referred to in the order of September 8, 1932, was terminated by the order of October 3, 1932, which provides:

"That said order of September 8, 1932, in so far as it suspended the operation of the schedules enumerated and described therein be, and it is hereby, vacated and set aside."

It is, therefore, apparent that the filing of the limited concurrences by the Wheeling and the Lorain, and the publication of increased interstate rates by The Pittsburgh & West Virginia Railway Company in accordance therewith, violate neither the letter nor the spirit of said rule 6 (k), of of said order of September 8, 1932, as modified by the order of October 3, 1932, in Investigation and Suspension Docket 3801.

Wherefore, The Wheeling and Lake Erie Railway Company respectfully requests that the Commission deny the [fol. 3136] petition of The Pittsburgh & West Virginia Railway Company to suspend the rates and the limited concurrences above referred to.

Respectfully submitted, The Wheeling and Lake Erie Railway Company, by Geo. Durham, Vice President and General Manager.

Dated at Cleveland, Ohio, November 17th, 1932.

Certificate of Service

I hereby certify that I have this day served the following document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to W. S. Bronson, General Attorney, The Pittsburgh & West Virginia Railway Company, 800 Southern Building, Washington, D. C.

Dated at Cleveland, Ohio, this 17th day of November, 1932.

Andrew P. Martin, Counsel for The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company.

(Here follows protest, side folios 3137 & 3138)

NOV 19'32 610362

Pittsburgh, Penna.,
November 15th, 1932

INTERSTATE COMMERCE COMMISSION
RECEIVED
NOV 18 1932
MAILS AND FILES

George B. McGinty, Secretary,
The Interstate Commerce Commission,
Washington, D. C.

Interstate Commerce Commission
NOV 19 1932
BOARD OF SUSPENSION

I. AND S. DOCKET
NOV 29 1932
3833

Dear Sir:

The Duquesne Coal & Coke Company operates the Aurora mine at Avella, Pa., on the Pittsburgh & West Virginia Railway in the Pittsburgh district, and markets a considerable volume of coal in Cleveland, Ohio, which we are able to do at a 10-cent differential over the rate accorded our Ohio No. 8 competitors.

When the Wheeling & Lake Erie reduced its Cleveland rate from $1.74 to $1.45 on August 1st, the Pittsburgh & West Virginia attempted to correspondingly reduce its Pittsburgh district rate to protect the 10-cent differential, and while its tariff was first suspended, the order of suspension was later vacated, and since October 5th we have enjoyed our former 10-cent differential over our Ohio No. 8 competitors. The Commission, however, did not discontinue the investigation into the Pittsburgh & West Virginia reduced rates when it vacated the order of suspension, and this proceeding I. & S. 3801 is now set for hearing at Columbus, Ohio on December 5th.

Upon inquiry the Pittsburgh & West Virginia people advise us that they were compelled to restore the old $1.84 rate against their will by the action of the Wheeling & Lake Erie in cancelling its concurrence, which, as we understand it, under the rules required the Pittsburgh & West Virginia Railway to publish rates in accordance with the Wheeling & Lake Erie restricted concurrence, which limited the Pittsburgh & West Virginia to the former $1.84 rate.

1966

NOV 19'32 610362

George B. McGinty, Esq. November 16th, 1932.

It is certainly unjust to coal shippers located on the Pittsburgh & West Virginia Railway in the Pittsburgh district to be deprived of their northern Ohio markets to enable the Wheeling & Lake Erie to monopolize that market for its Ohio No. 8 coal. We are entitled to just, reasonable and non-discriminatory rates, and it is manifest that a rate adjustment by which Ohio No. 8 enjoyed a differential under Pittsburgh of 10 cents a ton of more than 20 years standing, which was approved by your Commission in the Ohio-Michigan coal cases, 80 I.C.C. 663, should be required to be maintained pending the investigation by the Commission into the merits of the case, which we understand will be done at the Columbus hearing.

In these circumstances, we earnestly protest and respectfully ask that the proposed increases of the Pittsburgh & West Virginia rates be suspended, and the Pittsburgh & West Virginia Railway be not permitted to make any further change in our rates until the disposition of I. & S. No. 3801.

Susp't 300 pppd 12/7

Yours truly,

DUQUESNE COAL & COKE COMPANY

George H. Thiers
President

200 Ninth St 11-21-32

ACKNOWLEDGED
SUSPENSION BOARD FORM

9668

[fol. 3139] BEFORE INTERSTATE COMMERCE COMMISSION

In the Matter of Supplement 45 to Pittsburgh & West Virginia Railway Company Freight Tariff F-287, I. C. C. No. 225.

ANSWER OF CERTAIN CARRIERS IN CENTRAL FREIGHT ASSOCIATION TERRITORY TO PETITION OF THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY TO SUSPEND THE OPERATION OF INCREASED INTERSTATE RATES ON PENNSYLVANIA COAL TO NORTHERN OHIO AND PETITION OF SUCH ROADS URGING THAT THE INCREASED RATES BE PERMITTED TO TAKE EFFECT DECEMBER 27, 1932, AS PUBLISHED.—Filed Nov. 19, '32.

Come now

The Baltimore & Ohio Railroad Company

The Chesapeake & Ohio Railway Company, Erie Railroad Company, Louisville & Nashville Railroad Company

The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee)

The New York Central Railroad Company

The New York, Chicago & St. Louis Railroad Company, Norfolk & Western Railway Company

The Pennsylvania Railroad Company, Pere Marquette Railway Company

The Pittsburgh & Lake Erie Railroad Company, Western Maryland Railway Company,

carriers in Central Freight Association, hereinafter referred to as C. F. A. Lines, and by and through Roy S. Kern, Agent for and in behalf of each of them and answer the petition of the Pittsburgh & West Virginia Railway Company to suspend the operation of increased interstate rates on Pennsylvania coal to Northern Ohio destinations as published effective December 27, 1932, in Supplement 45 to Pittsburgh & West Virginia Railway Company Tariff I. C. C. No. 225 and urge that the Commission permit the increased rates to become effective as published. In support of their answer and petition these carriers respectfully show the following:

I

That each of them are common carriers of freight in Central Freight Association Territory, are subject to the

Interstate Commerce Act, and as such are vitally interested in, and for a large portion of their revenues are dependent upon the transportation of bituminous coal.

II

Bituminous coal is produced at various points in Central Freight Association Territory and contiguous territories served by these petitioners and such bituminous coal is marketed for steam, metallurgical and domestic purposes [fol. 3140] generally throughout Central Freight Association Territory, to which markets it is naturally contiguous and is transported by these petitioners upon freight rates which prior to Oct. 5, 1932, were the same as or related to the rates now applicable from mines and stations on the Pittsburgh & West Virginia Railway Company in the Pittsburgh District of Pennsylvania.

III

Supplement 45 to Pittsburgh & West Virginia Railway Company Joint and Proportional Freight Tariff F-287, I. C. C. 225, publishes rates on coal from mines and stations on the Pittsburgh & West Virginia Railroad Company in the Pittsburgh District of Pennsylvania to Cleveland and Huron, Ohio, via P. & W. V. Ry. Pittsburgh Junction, Ohio, W. & L. E. Ry. and to Lorain, Ohio via P. & W. Va. Ry. Pittsburgh Junction, Ohio, W. & L. E. Ry.-L. & W. Va. Ry. of $1.84 per net ton which cancel and supersede rates of $1.55 per net ton to Cleveland and Lorain and $1.65 per net ton to Huron, O. The existing rates became effective on Oct. 5, 1932, through operation of the Commission's Order dated Oct. 3, 1932, in I. & S. Docket 3801 which vacated that portion of the original Order in I. & S. Docket 3801 dated Sept. 8, 1932, suspending the effectiveness of reduced rates proposed by the Pittsburgh & West Virginia Railway Company from its Pittsburgh District stations and mines to Cleveland, Lorain, Huron and intermediate points but continued the original Order in full force and effect in all other respects. The newly filed schedule of the Pittsburgh & West Virginia Railway Company (Supplement 45 to I. C. C. 225) if permitted to take effect will restore the just and reasonable rates which had existed prior to October 5, 1932, not only to Cleveland, Lorain and Huron, Ohio, but to intermediate stations on the Wheeling & Lake Erie Railway and Lorain &

West Virginia Railway including Massillon, Ohio, which were reduced to the Cleveland-Lorain and/or Huron depressed basis through operation of the long and short haul requirements of the Fourth Section of the Act.

IV

C. F. A. Lines desire to call attention to their protest and petition of August 12, 1932, seeking suspension and investigation of the reductions originally proposed by the Pittsburgh & West Virginia Railway in Supplement 40 to its tariff I. C. C. 225 which presumably had something to do with the issuance of the original order in I. & S. Docket 3801 suspending the said reductions and instituting an investigation into the lawfulness thereof. In that protest and petition it was asserted that if the then proposed rates were permitted to become effective they would result in undue and unlawful prejudice to patrons of C. F. A. Lines and undue and unlawful preference of patrons of the Pittsburgh & West Virginia Railway Company. Since that time, and in part as the result of the Commission's amended Order in I. & S. Docket 3801 dated Oct. 3, 1932, there has been filed with the Commission complaint of the Western Pennsylvania Coal Traffic Bureau et al vs. A. C. & Y. Ry., C. & O. Ry. et al., Docket 25590, which in Paragraph XI alleges the existence of the preference and prejudice which these C. F. A. Lines pointed out would inevitably follow the effectiveness of the then proposed reductions. This paragraph of the Complaint reads:

[fol. 3141] "That the relationship of the rates on bituminous coal from the Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts on the one hand, and from Pittsburgh district mines located on the Pittsburgh & West Virginia Railway on the other hand, to destinations in northeastern Ohio, gives rise to undue prejudice and disadvantage to complainant operators, other than those located on the Pittsburgh & West Virginia Railway, to their mines in said Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts, and to their traffic in bituminous coal from their said mines and districts to destinations in northeastern Ohio, and gives

rise to undue preference and advantage to complainant operators' competitors located in the Pittsburgh district on the Pittsburgh & West Virginia Railway, to their mines on said Pittsburgh & West Virginia Railway, and to their traffic in bituminous coal from their mines on said Pittsburgh & West Virginia Railway, to destinations in northeastern Ohio."

V

Since the effectiveness on October 5, 1932, of the reduced rates of the Pittsburgh & West Virginia Railway Company, these C. F. A. Lines, or those of them which serve bituminous coal mines, have been, and are being, pressed by their shippers for reductions in rates to the affected destinations equal in cents per ton with those made by the Pittsburgh & West Virginia Railway Company on the premise that such are necessary in order to restore to them their opportunities to market coal at these important communities. Because of the investigation which the Commission has instituted in I. & S. Docket 3801 of the Pittsburgh & West Virginia Railway Company's reductions and the investigation under Sections 3 and 13 of the Interstate Commerce Act of reduced rates on bituminous coal for intrastate movements within Ohio, these C. F. A. Lines have been able to resist these demands for reductions but only with the greatest of difficulties.

VI

By permitting the increases proposed in Supplement 45 to Pittsburgh & West Virginia Railway Company Tariff 225 to become effective as published the Commission will aid in the preservation of the existing reasonable coal rate structure from the Pittsburgh and related bituminous coal producing districts to the affected destination territory in Northeastern Ohio during the pendency of the cases herein cited all of which will be heard at Columbus, Ohio, beginning December 5, 1932.

VII

Inasmuch as the increases proposed by the Pittsburgh & West Virginia Railway Company have the effect of restoring the parity in rates of all lines serving the Pittsburgh District which existed prior to their reductions of

Oct. 5, 1932, C. F. A. Lines believe it appropriate to restate here the reasons set forth in their original protest [fol. 3142] against the reductions of October 5, 1932, for believing *that* their existing rates from the Pittsburgh District to destinations in Northeastern Ohio to be just and reasonable. They, therefore, again call attention to the decisions and orders of the Commission in I. & S. Docket 774, bituminous coal to Central Freight Association Territory, 46 I. C. C. 66, where at page 81 the Commission recognized the Pittsburgh District to Cleveland rate as the basis for the Hocking District to Toledo rate which in turn formed the foundation upon which the rate structure therein approved to affected territory rested; Canton Chamber of Commerce vs. P. R. R., Director General as Agent et al., 56 I. C. C. 293, where the Commission prescribed nonprejudicial and non-discriminatory rates from the Pittsburgh District to Canton, O.; and Youngstown Sheet & Tube Company vs. P. & L. E. R. R. et al., 29 I. C. C. 428, where the Commission prescribed reasonable rates from the Pittsburgh District to Youngstown, Ohio, which are subsequently recognized in I. & S. 774 Supra as the key rate to the adjustment obtaining from the Pittsburgh, Connellsville and Fairmont Districts to destinations in Ohio east of affected territory including Lorain, Cleveland, Huron, Canton and Massillon. The rate structure from the origin districts in Official Classification Territory to Central Freight Association affected territory with which the rates from the Pittsburgh and related districts to Cleveland, Lorain, Huron, Canton and Massillon are associated have been, since I. & S. 774, approved by the Commission in Ohio-Michigan Coal Cases, 80 I. C. C. 663, and in part in Indiana State Chamber of Commerce vs. B. & O. R. R. et al., 83 I. C. C. 591; Indiana State Chamber of Commerce vs. A. A. R. R. et al., 115 I. C. C. 650; Kalamazoo Chamber of Commerce et al. vs. C. & O. Ry. et al., 107 I. C. C. 291, and several other cases. In these decisions the Commission declared that the rates to affected territory are less than reasonable maximum rates.

VIII

These C. F. A. Lines submit that the petition of the Pittsburgh & West Virginia Railway Company to suspend the operation of their increased interstate rates affords the

Commission no basis either in fact or in law for the suspension of the said schedule and the maintenance by that carriers of low rates which have already given rise to a complaint by bituminous coal operators in the Pittsburgh and Connellsville Districts and which as hereinbefore stated unduly and unlawfully prefer producers and shippers on the Pittsburgh & West Virginia Railway and prejudices those served by other carriers in such districts. On the other hand C. F. A. Lines believe that because the entire adjustment of rates from the Pittsburgh and related Districts as well as intrastate rates within Ohio are before the Commission in cases hereinbefore cited which will be heard beginning on Dec. 5, 1932, and which will enable the Commission to prescribe; in accordance with the law and the evidence, proper rates and rate relationships between the Ohio fields on the one hand and Pittsburgh and related Districts on the other about which the Pittsburgh & West Virginia Railway Company complaint, there is no sound reason for suspending Supplement 45 to Pittsburgh & West Virginia Railway Company Tariff I. C. C. 225 and thereby permitting the continuance of the existing preference and prejudice.

[fol. 3143] IX

By reason of the foregoing these C. F. A. Lines assert that so long as the existing sub-normal and unduly depressed rates of the Pittsburgh & West Virginia Railway Company remain in effect the entire bituminous coal rate adjustment of which they form a part is in jeopardy and that the increases in such low rates proposed will restore them to a normal and proper level.

Wherefore, these C. F. A. Lines respectfully pray that the Commission will not suspend the operation of the proposed increased rates as named in Supplement 45 to Pittsburgh & West Virginia Railway Company's Joint and Proportional Freight Tariff F-287, I. C. C. 225, but on the contrary permit the same to become operative effective Dec. 27, 1932, as published.

Respectfully submitted, Roy S. Kern, Agent for Said Petitioners Hereinbefore Named.

836 Wabash Bldg., Pittsburgh, Pa.

Nov. 18, 1932.

[fol. 3144] BEFORE INTERSTATE COMMERCE COMMISSION

PETITION OF PROTEST AND PRAYER FOR ORDER OF SUSPENSION—Filed Nov. 29, 1932

Comes now Western Pennsylvania Coal Traffic Bureau and protests against (a) the proposed increased rates on bituminous coal named in Supplement No. 45 to the Pittsburgh & West Virginia Railway Company Tariff I. C. C. 225, published and filed to become effective December 27, 1932, and (b) the new and restricted concurrences of:

The Wheeling & Lake Erie Railway Company, FX 4, No. 23;
The Lorain & West Virginia Railway Company, FX 4, No. 24,

both published and filed to become effective December 27, 1932; and respectfully prays that the Commission suspend said Tariff Supplement and Concurrences and enter into an investigation of the lawfulness of the rates, regulations, and practices contained therein.

And for grounds of said petition, Western Pennsylvania Coal Traffic Bureau respectfully alleges that:

I

Western Pennsylvania Coal Traffic Bureau is a voluntary association of operators of mines producing bituminous coal in the Freeport, Pittsburgh and Connellsville districts in the State of Pennsylvania, with its principal office located in Pittsburgh, Pa., and with the mines of its members located on the following railroads:

Baltimore and Ohio Railroad Company,
Monongahela Railway Company,
Montour Railroad Company,
Pennsylvania Railroad Company,
Pittsburgh, Chartiers & Youghiogheny Railway Company,
Pittsburgh & Lake Erie Railroad Company,
Pittsburgh & West Virginia Railway Company,
Unity Railways Company.

[fol. 3145] Western Pennsylvania Coal Traffic Bureau was and is a Protestant in the proceeding before this Commis-

sion styled I. & S. Docket No. 3801, Coal from Pennsylvania to Northern Ohio, hereinafter referred to.

II

Protestant's members produce annually at their mines in said districts from fifteen to twenty-five million tons of bituminous coal, a very large part of which is shipped to markets in interstate commerce, one of the most important of said markets being communities located in northeastern Ohio, which, for the purpose of this petition, may be described as embracing that portion of Ohio east of the Sandusky-Galion line and north of an east and west line drawn through Columbus.

III

The schedules protested against propose to increase the rates on bituminous coal from points in western Pennsylvania to Cleveland, Lorain, and Huron, Ohio, and certain intermediate Ohio destinations, the following statement of rates being illustrative:

Rates in Cents Per Ton of 2,000 Pounds from Avella, Pa.

To	Present	Proposed
Cleveland, Ohio	155	184
Huron, Ohio	165	184
Lorain, Ohio	155	184

IV

For many years past the rates on bituminous coal from western Pennsylvania mines, and specifically by way of illustration, from mines in the Pittsburgh district to Cleveland, have been ten (10) cents per net ton in excess of the contemporaneously effective rates from mines in the Ohio Number 8 district to the same destinations, including Cleveland. Bituminous Coal to C. F. A. Territory, 46 I. C. C. 66, 81.

[fol. 3146] Contemporaneously, the rates on bituminous coal from Ohio Number 8 district mines to such destinations as Erie, Pa. and Buffalo, N. Y. have been the same as the rates from Pittsburgh.

Effective August 1, 1932, the Wheeling & Lake Erie Railway Company reduced the intrastate rates from its Ohio No. 8 district mines and effective August 12, 1932, the Pittsburgh & West Virginia reduced the intrastate rates from its Ohio No. 8 district mines to destinations in northeastern Ohio, the reduction to Cleveland being 29 cents per ton in each case.

Subsequently, and prior to the proposed effective date of said Pittsburgh & West Virginia rates, the Baltimore & Ohio Railroad, New York Central System, and Pennsylvania Railroad published and made effective on short notice reduced rates from their mines in the Ohio No. 8 district to destinations in northeastern Ohio upon the same level as had been published by the Wheeling & Lake Erie from its mines in said district effective August 1, 1932 as aforesaid; but the said trunk lines failed and refused, and have ever since continued to fail and refuse, to publish similar reductions in the interstate rates from their mines in the western Pennsylvania districts to destinations in northeastern Ohio, but on the contrary protested against and prayed suspension of the proposed reduced rates published by the Pittsburgh & West Virginia from its Pittsburgh district mines in interstate commerce to northeastern Ohio destinations. Division 2 suspended said reduced rates of the Pittsburgh & West Virginia, but said Division 2 Suspension Order was subsequently vacated by the Commission, which contemporaneously continued the investigation of said rates under I. & S. Docket 3801, Coal from Pennsylvania to Northern Ohio.

The reductions proposed by the Pittsburgh & West Virginia and which were thus permitted by the entire Commission to become effective were made to meet the reductions on Ohio intrastate traffic by the Wheeling & Lake Erie and [fol. 3147] the Pittsburgh & West Virginia and thus to maintain from some Pittsburgh district mines the long established differential relationship between Ohio Number 8 mines and such Pittsburgh district mines in the markets of northeastern Ohio.

The table below shows the past, present, and the Pittsburgh & West Virginia proposed rates and the relationship of rates on bituminous coal from the Ohio Number 8 and

the Pittsburgh districts to Cleveland, Huron, and Lorain, Ohio, as illustrative:

Rates (Cents Per Net Ton) on Bituminous Coal

To	From		
	Pittsburgh (all lines)	Pittsburgh (P. & W. V. only)*	Ohio No. 8 (all lines)
Cleveland			
Before 8/1/32	184		174
Effec. 8/1/32	184		145 (A)
Effec. 10/5/32		155	
Effec. 12/27/32		184 (B)	
Lorain			
Before 8/1/32	184		174
Effec. 8/1/32	184		145 (A)
Effec. 10/5/32		155	
Effec. 12/27/32		184 (B)	
Huron			
Before 8/1/32	184*		174
Effec. 8/1/32	184*		155 (A)
Effec. 10/5/32		165	
Effec. 12/27/32		184 (B)	

NOTES. (A) Published effective 8/1/32 by W. & L. E., subsequently published by trunk lines and the P. & W. V.
(B) Suspension prayed for herein.

*Applicable only from mines on P. & W. V. and Montour.

The result of the reductions in rates from the Ohio Number 8 district to northeastern Ohio destinations effective August 1, 1932, was to increase the former 10 cent differential of the Pittsburgh district mines over the Ohio Number [fol. 3148] 8 mines to 39 cents per net ton, using Cleveland, Ohio as a typical destination.

The effect of the reductions of the Pittsburgh & West Virginia from its Pittsburgh district mines to northeastern Ohio destinations effective October 5, 1932, was to restore the differential relationships between the Ohio Number 8 and the Pittsburgh district mines located on the Pittsburgh & West Virginia to the same basis which had always existed up until August 1, 1932.

V

In the course of the hearing before the Suspension Board, in the proceeding thereafter docketed by the Commission as I. & S. 3801, the Pittsburgh & West Virginia stated that, should its then proposed reduced rates be permitted to become effective, it would extend the application thereof to mines located on short-line connections from which the

Pittsburgh & West Virginia customarily applies via its line the same Pittsburgh district rates as apply from mines on its lines.

In its Petition filed in said Docket I. & S. 3801 praying that the order of suspension therein entered by Division 2 be vacated (as theretofore likewise prayed by this Protestant in said Docket I. & S. 3801) the Pittsburgh & West Virginia further stated:

"The reductions in interstate rates (i.e., to northeastern Ohio destinations) were necessary to avoid unjust discrimination against Pennsylvania shippers, localities and coal and against interstate commerce" (page 4).

"Protestants (i.e., the Pennsylvania Railroad, Baltimore & Ohio Railroad, and New York Central Railroad) by favoring their Ohio No. 8 intrastate shippers at the expense of their Pennsylvania interstate shippers, were unjustly discriminating against Pennsylvania shippers, localities, coal and against interstate commerce contrary to the rulings of the Commission" (page 4).

"Respondent (i.e., the Pittsburgh & West Virginia) contended that the Pittsburgh & West Virginia Railway owed the duty to itself and to its Pittsburgh district shippers to preserve the Cleveland, Lorain and Huron market to Penn- [fol. 3149] sylvania interstate coal by maintaining the long standing and Commission-approved differential of 10 cents; that the Pennsylvania, Baltimore & Ohio, and New York Central owed the same duty to their Pittsburgh district shippers and having permitted their Ohio No. 8 intrastate shippers to meet the competition of the Wheeling & Lake Erie Ohio No. 8 intrastate shippers, they were in duty bound under the law as laid down by the Commission in innumerable cases to accord their Pittsburgh district interstate shippers idenfically the same treatment accorded their Ohio No. 8 intrastate shippers" (pages 6-7).

"When protestants reduced their Ohio No. 8 rates to enable their Ohio No. 8 shippers to compete with Wheeling & Lake Erie Ohio No. 8 shippers, under all the rulings of the Commission, to avoid unjust discrimination they were compelled by law to correspondingly reduce their Pittsburgh district rates, regardless of the effect upon their revenues, and the Interstate Commerce Commission can not afford to put its stamp of approval on a carrier policy which

has the effect of barring Pennsylvania coal from common Ohio markets merely because protestants will lose revenue by observing the law and avoiding unjust discrimination" (page 9).

"When asked the question by the Chairman of the Suspension Board, as to whether protestants were claiming that the proposed Pittsburgh & West Virginia interstate rates of $1.55 to Cleveland and Lorain and $1.65 to Huron were unreasonably low in violation of Section 1 or unduly prejudicial in violation of Section 3, the only witness produced by protestants disclaimed that the proposed rates of the Pittsburgh & West Virginia were violative of either Section 1 or 3, claiming however that the rates were violative of Section 15" (page 11).

"The Pennsylvania, Baltimore & Ohio, and New York Central should have correspondingly reduced their Pittsburgh district rates and thereby avoided the undue prejudice which now exists against Pittsburgh district shippers, localities, coal, and the unjust discrimination now existing against interstate commerce, all created by their failure to do that which they could have done without affecting in the slightest their right under the statute to secure relief under Section 13 (3) and (4)" (page 13).

And in its petition heretofore filed and dated November 10, 1932, protesting and praying suspension of said P. & W. V. Supplement No. 45 to its Tariff I. C. C. 225 and said W. & L. E. and L. & W. V. concurrences, the Pittsburgh & West Virginia further states:

The proposed increased rates "are relatively unreasonable in violation of Section 1 and unjustly discriminatory against interstate commerce and unduly prejudicial to Pennsylvania interstate coal, Pennsylvania localities and Pennsylvania shippers and unduly preferential to Ohio intrastate coal, Ohio localities, and Ohio shippers in violation of Sections 3 and 13 of the Interstate Commerce Act" (Preamble).

[fol. 3150] "That, the act of The Pittsburgh & West Virginia Railway Company in reducing its Pittsburgh District rates to thereby restore the 10¢ differential, removed effective October 5, the unjust discrimination against interstate commerce in favor of Ohio intrastate commerce and the undue prejudice against Pennsylvania coal, Pennsylvania

localities and Pennsylvania shippers which had existed in favor of Ohio coal, Ohio localities and Ohio shippers between August 1, and October 5, 1932, created by the Act of The Wheeling & Lake Erie Railway Company" (Paragraph IX).

The proposed increased rates "will be unreasonable in relation to the rates published by The Wheeling & Lake Erie Railway Company from its Ohio No. 8 mines to the Cleveland and Huron, Ohio, group points and The Wheeling & Lake Erie and The Lorain and West Virginia Railway Company to the Lorain, Ohio, group points in violation of Section 1 and unjustly discriminatory against interstate commerce and in favor of Ohio intrastate commerce and unduly prejudicial against Pennsylvania coal, localities and shippers and unduly preferential to Ohio coal, localities and shippers in violation of Sections 3 and 13 of the Interstate Commerce Act" (Paragraph X).

"Failure to suspend the increased rates will also seriously injure shippers located on petitioner's line in the State of Pennsylvania who now enjoy a substantial steam and domestic market in Cleveland, Lorain and Huron, by depriving them of their market in that territory for steam and domestic coal and which in turn will necessarily result in the loss of other markets for prepared coal. Lastly, failure to suspend the increased rates will enable The Wheeling & Lake Erie Railway Company to accomplish the purpose it had in mind when it voluntarily reduced its Ohio No. 8 rates and thereby so widen the long established differential of 10¢ Ohio No. 8 under Pittsburgh, as to practically drive Pennsylvania coal out of the Northern Ohio market for steam and domestic purposes" (Paragraph XIII).

VI

At the present time, in consequence of the reductions in rates on Ohio intrastate coal, as above referred to, and the failure of the carriers publishing such Ohio intrastate rates to make reductions in the interstate rates from Pennsylvania mines (except the Pittsburgh & West Virginia from its strictly local Pittsburgh & West Virginia mines) the rates from all Pennsylvania mines to northeastern Ohio destinations are unjustly and unreasonably high and excessive, in violation of Section 1, and the relationship of the rates from Pennsylvania mines and from Ohio mines to destinations in northeastern Ohio results in unjust discrimi-

nation against interstate commerce, undue prejudice to [fol. 3151] Pennsylvania interstate coal, Pennsylvania localities, and Pennsylvania shippers and undue preference to Ohio intrastate coal, Ohio localities, and Ohio shippers, all in violation of Sections 3 and 13 of the interstate commerce act; and Protestant is now a complainant before this Commission in Docket No. 25590 attacking such unlawfulness in said rates.

VII

Northeastern Ohio is a populous and highly industrialized territory, wherein large volumes of bituminous coal are consumed, and constitutes one of the largest markets of the commercial coal producers of the western Pennsylvania districts. The consumption of bituminous coal in northeastern Ohio is of both steam and domestic coals in one class, and gas and metallurgical coals in another class. Gas and metallurgical coals are not produced in the Ohio districts, but steam and domestic coals are produced in both the western Pennsylvania and the Ohio districts, and are consumed to the extent of many millions of tons in northeastern Ohio. The principal competition in the sale of steam and domestic coal in northeastern Ohio is between the eastern Ohio districts, including Ohio Number 8, and the western Pennsylvania districts.

The production of gas and metallurgical coals in the western Pennsylvaina districts and their shipment to northeastern Ohio destinations is largely a production and movement of captive coal. The production of steam and domestic coal in the western Pennsylvania districts and their shipment to northeastern Ohio destinations, is largely a production and movement of commercial coal.

Bituminous coal consumers in the northeastern Ohio markets have definitely informed producers of coal in the western Pennsylvania districts that while Pittsburgh district coal may be worth 10 cents more per ton in Cleveland than is Ohio Number 8 coal it is not worth 39 cents more, and that they will not purchase western Pennsylvania coal at a freight rate 39 cents per ton in excess of [fol. 3152] the contemporaneously effective rates applying from mines in the Ohio Number 8 district. Many of such consumers have already discontinued purchasing coal from the western Pennsylvania districts. The consequent pros-

pective loss of business by western Pennsylvania mines will aggregate several million tons per annum. The loss in the case of one producer alone is estimated at not less than 3,000 tons daily.

Approximately 62.2 per cent of all the bituminous coal shipments from western Pennsylvania districts to Central Freight Association territory moves to destinations in northeastern Ohio; 26 per cent of all western Pennsylvania coal shipped to Central Freight Association territory moves to destinations in northeastern Ohio, to which the rates from the Ohio Number 8 district have already been reduced. These figures indicate the vital necessity of protection by the Commission of lawful rates and lawful rate relationships as between the western Pennsylvania and Ohio Number 8 competing producing districts, even to the relatively slight additional extent to which that is possible by the reduced rates from the Pittsburgh & West Virginia local Pittsburgh district mines now effective by virtue of the vacating order of the entire Commission in I. & S. 3801, as already said, and by the promises of said Pittsburgh & West Virginia, as already said, and relied upon by this Protestant, to extend said reduced rates now applicable only from Pittsburgh & West Virginia local mines, to mines on short line connection of said Pittsburgh & West Virginia Railway.

VIII

The proposed cancellation by The Wheeling & Lake Erie and The Lorain & West Virginia of their presently effective general concurrences FX 3, No. 594, and FX 3, No. 596, and the proposed substitution therefor of their limited concurrences FX 4, No. 23 and FX 4, No. 24, compel, and were and are now intended by said Wheeling & Lake Erie [fol. 3153] and Lorain & West Virginia to compel the Pittsburgh & West Virginia to cancel the presently effective and already unreasonably high rates from Pittsburgh & West Virginia mines in the Pittsburgh district to destinations in northeastern Ohio, and to compel the publication in lieu thereof of even higher rates, usually by 29 cents per ton.

Such presently effective rates from Pittsburgh & West Virginia mines in the Pittsburgh district to destinations in northeastern Ohio include those rates which were sus-

pended by Division 2 in its order of suspension in I. & S. 3801 and which thereafter became effective by virtue of the order of the Commission vacating said order of suspension by Division 2.

The action of the Wheeling & Lake Erie and the Lorain & West Virginia in cancelling general concurrences and substituting limited concurrence therefor, as aforesaid, and the consequent compelled action of the Pittsburgh & West Virginia proposing to cancel the present rates from its Pittsburgh district mines and to publish in lieu thereof much higher rates to destinations in northeastern Ohio flouts the Commission and constitutes nothing less than an attempt to restore the previously effective unjust discrimination against persons and localities in western Pennsylvania and against interstate commerce in bituminous coal from western Pennsylvania to northeastern Ohio, which was removed in part by the vacating order of the Commission in I. & S. 3801.

Said action by said Wheeling & Lake Erie and said Lorain & West Virginia will have the further effect, should it be permitted to be consummated, of making it impossible for said Pittsburgh & West Virginia to fulfill its promises, referred to above, to extend the application of its presently effective rates from its local mines to northeastern Ohio destinations, to mines on its short line connections from which it customarily publishes rates, and thus, and to that extent, remove the unjust discrimination against persons and localities in interstate commerce re- [fol. 3154] peatedly admitted by the Pittsburgh & West Virginia to exist by virtue of the reduction in intrastate rates on Ohio coal with no like reductions in interstate rates on Pennsylvania coal, to destinations in northeastern Ohio.

IX

Said action by said Wheeling & Lake Erie and Lorain & West Virginia and said consequently compelled action of the Pittsburgh & West Virginia will have the effect of practically excluding interstate commerce in bituminous coal and particularly Pennsylvania coal for steam and domestic use, from the markets of northeastern Ohio by the imposition of rates of transportation thereon which are unjust and unreasonable, unduly prejudicial, and un-

justly discriminatory against interstate commerce in violation of Sections 1, 3 and 13 of the Interstate Commerce Act.

X

The rates applicable to the transportation of bituminous coal from Ohio No. 8 and western Pennsylvania mines are now under investigation by this Commission, and hearing is set at Columbus, Ohio on December 5, 1932, in one or another or all of the several proceedings, including those docketed as:

I. & S. 3801—Coal from Pennsylvania to Northern Ohio.

No. 25566—Rates on Bituminous Coal within the State of Ohio.

No. 25590—Western Pennsylvania Coal Traffic Bureau, et al. v. The Akron, Canton & Youngstown Railway Company, et al.

and no hardship upon anyone will result from the addition of another investigation of the rates, rules, regulations and practices of the Pittsburgh & West Virginia, the Wheeling & Lake Erie, and the Lorain & West Virginia as herein prayed.

Wherefore, your Protestants relying upon the good faith and integrity of the Pittsburgh & West Virginia and its officials, and upon their promises to make effective from mines on the short line connections of the Pittsburgh & [fol. 3155] West Virginia the same rates as are now effective to northeastern Ohio destinations from mines local to the Pittsburgh & West Virginia, and thus to remove the unjust discrimination against the interstate commerce from mines on such short line connections, respectfully pray that the Commission

(a) suspend the effectiveness of the proposed increased rates named in Supplement No. 45 to the Pittsburgh & West Virginia Railway Company, I. C. C. No. 225;

(b) suspend the proposed cancellation of Wheeling & Lake Erie and Lorain & West Virginia concurrences FX 3, No. 594 and FX 3, No. 596;

(c) suspend the proposed substitution therefor of Wheeling & Lake Erie and Lorain & West Virginia limited concurrences FX 4, No. 23 and FX 4, No. 24, and;

(d) enter upon an investigation into the lawfulness of the rates, rules, regulations, and practices filed with the Commission in such tariffs, cancellation of concurrences, and substituted concurrences.

Respectfully submitted, Western Pennsylvania Coal Traffic Bureau, Protestant, by August G. Gutheim, 712 Jackson Place, Washington, D. C., Attorney. A. S. Boden, Empire Bldg., Pittsburgh, Pa., Secretary.

November 28, 1932.

[fol. 3156] *Duly sworn to by A. S. Boden. Jurat omitted in printing.*

[fol. 3157] BEFORE INTERSTATE COMMERCE COMMISSION.

Investigation and Suspension Docket No. 3833

Coal from Pennsylvania to Northern Ohio (2)

ORDER—NOV. 29, 1932

It appearing, That there has been filed with the Interstate Commerce Commission by The Pittsburgh & West Virginia Railway Company, a tariff containing schedules stating new individual and joint rates and charges, and new individual and joint regulations and practices affecting such rates and charges, to become effective on the 27th day of December, 1932, designated as follows:

The Pittsburgh & West Virginia Railway Company; Supplement No. 45 to I. C. C. No. 225;

It is ordered, That the Commission upon complaint, without formal pleading, enter upon a hearing concerning the lawfulness of rates, charges, regulations and practices stated in the said schedules contained in said tariff, viz: on page 4 thereof, all provisions shown in connection with Index Nos. 3950, 3951, 3953, 3955 and 6929 to 7014, inclusive.

It further appearing, That said schedules make certain increases in rates for the interstate transportation of bituminous coal, in carloads, and the rights and interests of the

public appearing to be injuriously affected thereby, and it being the opinion of the Commission that the effective date of the said schedules contained in tariff should be postponed pending said hearing and decision thereon;

It is further ordered, That the operation of the said schedules contained in said tariff be suspended, and that the use of the rates, charges, regulations and practices therein stated be deferred upon interstate traffic until the 27th day of July, 1933, unless otherwise ordered by the Commission and no change shall be made in such rates, charges, regulations and practices during the said period of suspension unless authorized by special permission of the Commission.

It is further ordered, That the rates and charges and the regulations and practices thereby sought to be altered shall not be changed by any subsequent tariff or schedule, until this investigation and suspension proceeding has been disposed of or until the period of suspension and any extension thereof has expired, unless authorized by special permission of the Commission.

It is further ordered, That a copy of this order be filed with said schedules in the office of the Interstate Commerce Commission, and that copies hereof be forthwith served upon the carriers parties to said schedules and that said carriers parties to said schedules be, and they are hereby, made respondents to this proceeding.

And it is further ordered, That this proceeding be, and the same is hereby assigned for hearing December 5, 1932, 10 o'clock A. M. Standard time at the Deshler Wallick Hotel, Columbus, Ohio, before Examiner Trezise.

By the Commission, Division 2.

George B. McGinty, Secretary. (Seal.)

[fol. 3158] PETITIONERS' EXHIBIT No. 4

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Complaint filed October 21, 1932,

Answer of the Bessemer & Lake Erie Railroad Company filed October 28, 1932,

Answer of The Northern Ohio Railway Company filed October 29, 1932,

Answer of The Akron, Canton & Youngstown Railway Company filed October 29, 1932,

Joint answer of Cleveland, Cincinnati, Chicago & St. Louis Railway Company (N. Y. C. R. R. Co., Lessee), The New York Central Railroad Company, and The Pittsburgh & Lake Erie Railroad Company filed November 1, 1932,

Joint answer of The Wheeling & Lake Erie Railway Company and The Lorain & West Virginia Railway Company filed November 9, 1932,

Answer of The Baltimore & Ohio Railroad Company filed November 14, 1932,

Joint answer of The Pennsylvania Railroad Company, The Monongahela Railway Company, Pittsburgh, Chartiers & Youghiogheny Railway Company, and The Winfield Railway Company filed November 15, 1932,

Amended Answer of Cleveland, Cincinnati, Chicago & St. Louis Railway Company (The New York Central Railroad Company, lessee), The Pittsburgh & Lake Erie Railroad Company, and The New York Central Railroad Company filed December 3, 1932,

Intervening petition of Rochester & Pittsburgh Coal Company filed December 5, 1932,

Intervening petition of the Youngstown Sheet & Tube Company filed December 12, 1932, and

Intervening petition of The Central Pennsylvania Coal Producers' Association filed December 14, 1932

[fol. 3159] in Case No. 25590, Western Pennsylvania Coal Traffic Bureau, et al. v. The Akron, Canton & Youngstown Railway Company, et al., the originals of which are now on file and of record in the office of this Commission.

I do further certify that the papers and documents above referred to filed prior to December 5, 1932 constitute a true copy of the record (except correspondence) in Case No. 25590, Western Pennsylvania Coal Traffic Bureau, et al. v. The Akron, Canton & Youngstown Railway Company, et al., as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3160] [File endorsement omitted]

[fol. 3161] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al., Complainants,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, et al., Defendants.

COMPLAINT—Filed Oct. 21, 1932

The complaint of the above-named complainants respectfully represents:

I

That complainant Western Pennsylvania Coal Traffic Bureau is a voluntary association of operators of mines producing bituminous coal in the Freeport, Pittsburgh, and Connellsville districts in the State of Pennsylvania, with its principal office in Pittsburgh, Pa.

[fol. 3162] That all complainants other than said Western Pennsylvania Coal Traffic Bureau are corporations engaged in producing bituminous coal in the Freeport, Pittsburgh, and Connellsville districts in the State of Pennsylvania and in shipping such coal in interstate commerce, and are named and have mines and general office locations as shown in Exhibit A, attached hereto and made a part hereof, and will be referred to herein as complainant operators.

That the Freeport, Pittsburgh, and Connellsville districts in the State of Pennsylvania embrace all, or portions, of

the bituminous coal producing areas in the counties of Butler, Allegheny, Washington, Greene, Armstrong, Westmoreland, and Fayette, in the State of Pennsylvania; that said districts in their entirety are more particularly described in the freight tariffs of the defendant carriers herein which serve said districts as originating lines; and that among such tariffs are the following:

B. & O. R. R. Tariff C. & C. Series I. C. C. No. 2725 as amended.

B. & O. R. R. Tariff C. & C. Series I. C. C. No. 2696 as amended.

B. & L. E. R. R. Tariff I. C. C. No. 972 as amended.

B. & L. E. R. R. Tariff I. C. C. No. 818 as amended.

P. R. R. Tariff AA-I. C. C. No. 2035 as amended.

P. R. R. Tariff I. C. C. F-1739 as amended.

P. R. R. Tariff I. C. C. F-1958 as amended.

P. & L. E. R. R. Tariff I. C. C. No. 2983 as amended.

P. & W. V. Ry. Tariff I. C. C. No. 225 as amended.

P. & W. V. Ry. Tariff I. C. C. No. 348.

[fol. 3163] II

That the defendants herein are named in Exhibit B, attached hereto and made a part hereof, and are common carriers engaged in the interstate transportation of property wholly by railroad, and more particularly in the transportation of bituminous coal wholly by railroad from mines in the Freeport, Pittsburgh, and Connellsville districts, to destinations in the State of Ohio, and especially to destinations located in that portion of Ohio generally east of a line drawn through Sandusky, Galion, and Columbus, and generally north of an east and west line drawn through Columbus, which portion of the State of Ohio will be referred to in this complaint as northeastern Ohio.

III

That complainant operators produce in said Freeport, Pittsburgh, and Connellsville districts, as heretofore defined, high-volatile bituminous coal suitable for all purposes for which such coal is customarily used, and in a volume of many millions of tons annually; that for many years a very considerable tonnage of such coal has been shipped by said complainant operators to destinations in

northeastern Ohio; and that said coal so shipped to northeastern Ohio has been used for practically all purposes, and especially for railway fuel, for steam and domestic purposes, for the manufacture of gas, for the manufacture of coke, and for metallurgical purposes.

[fol. 3164]

IV

That the coal shipped by complainant operators from said Freeport, Pittsburgh, and Connellsville districts to destinations in northeastern Ohio has been and is transported in interstate commerce by defendants herein.

V

That mines in other bituminous coal producing districts, located in eastern Ohio, and particularly mines in the Ohio Number 8 district, produce large quantities of bituminous coal and ship the same or a large portion thereof, to destinations in northeastern Ohio; that the coals so produced in said Ohio districts, including the Ohio Number 8 district, are high-volatile coals, suitable in large part for the same purposes for which high-volatile coals from the Freeport, Pittsburgh, and Connellsville districts are also suitable; and that said coals are transported from said Ohio districts, including Ohio Number 8 district, in intrastate commerce to destinations in northeastern Ohio by defendants herein.

VI

That the rates on bituminous coal from said Freeport, Pittsburgh, and Connellsville districts and from named eastern Ohio districts, to important and typical destinations in northeastern Ohio applicable via the lines of defendants herein are, per net ton of 2000 pounds, as shown in the table following:

[fol. 3165]

District						Ohio No. 8		Middle		Massillon	
To	From	Freeport	Pittsburgh (other than P. & W. V. Ry.)	Pittsburgh (P. & W. V. Ry.)	Connellsville	Before 8/1/32	Present	Before 8/1/32	Present	Before 8/1/32	Present
Youngstown, O		$1.34	$1.34	$1.34	$1.42	$1.34	$1.34	$1.34	$1.34	$1.34	$1.34
Canton, O		N.R.	1.59	1.55	1.65	1.20	1.08	1.01	.80	1.01	.80
Akron, O		1.72	1.72	1.72	1.78	1.51	1.28	1.26	1.01	1.26	.87
Massillon, O		N.R.	1.59	1.55	1.65	1.26	1.08	1.01	.80	1.13	.80
Cleveland, O		1.84	1.84	1.55	1.90	1.74	1.45	1.54	1.22	1.54	1.08
Lorain, O		1.84	1.84	1.55	1.90	1.74	1.45	1.54	1.28	1.54	1.08
Mansfield, O		2.03	2.03	2.03	2.09	1.78	1.78	1.63	1.63	1.53	1.53

NOTE: The above rates, former and present, did not and do not, in some instances, apply from certain origin points in a district.
N. R.—No rate.

[fol. 3166] VII

That complainant operators are, and each of them is, in competition with each other and with other operators in their districts and with the operators in the coal producing districts in eastern Ohio, in the sale and shipment of their coal; that such competition is especially keen in the sale and shipment of coal to destinations in northeastern Ohio; that complainant operators, because of recent reductions in the intrastate rates on bituminous coal from mines in the eastern Ohio districts to destinations in northeastern Ohio with no contemporary reductions in the interstate rates on bituminous coal from the Freeport, Pittsburgh (other than the mines on the Pittsburgh & West Virginia Railway), and Connellsville districts to such destinations, have suffered, and are now suffering, material losses in business in northeastern Ohio; and that complainant operators will so continue to suffer material losses in business in northeastern Ohio so long as the rates and the adjustment of rates herein complained against remain in effect.

VIII

That complainant operators not located on the Pittsburgh & West Virginia Railway are in competition with operators of mines located in the Pittsburgh district on said Pittsburgh & West Virginia Railway in the sale and shipment of their coal; that such competition is especially keen in the sale and shipment of coal to destinations in northeastern Ohio; that complainant operators, because of recent reductions in the interstate rates on bituminous coal from mines in the Pittsburgh district on said Pittsburgh & West Virginia Railway to destinations in northeastern [fol. 3167] Ohio, with no contemporaneous reductions in the interstate rates on bituminous coal from the Freeport, Pittsburgh (other than the mines on the Pittsburgh & West Virginia Railway), and Connellsville districts to such destinations, have suffered, and are now suffering, material losses in business in northeastern Ohio; and that complainant operators will continue so to suffer material losses in business in northeastern Ohio so long as the rates and the adjustment of rates herein complained against remains in effect.

IX

That the rates on bituminous coal from the Freeport, Pittsburgh, and Connellsville districts to destinations in northeastern Ohio are excessive, unjust, and unreasonably high.

X

That the relationship of the rates on bituminous coal from the Freeport, Pittsburgh, (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts on the one hand, and from the eastern Ohio districts on the other hand, to destinations in northeastern Ohio, gives rise to undue prejudice and disadvantage to complainant operators, other than those located on the Pittsburgh & West Virginia Railway, to their mines in said Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts, and to their traffic in bituminous coal from their said mines and districts to destinations in northeastern Ohio, and gives rise to undue preference and advantage to complainant operators' competitors located in the eastern Ohio districts, to their mines in said eastern Ohio districts, and to their traffic in bituminous coal from said [fol. 3168] mines and districts to destinations in northeastern Ohio.

XI

That the relationship of the rates on bituminous coal from the Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts on the one hand, and from Pittsburgh district mines located on the Pittsburgh & West Virginia Railway on the other hand, to destinations in northeastern Ohio, gives rise to undue prejudice and disadvantage to complainant operators, other than those located on the Pittsburgh & West Virginia Railway, to their mines in said Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts, and to their traffic in bituminous coal from their said mines and districts to destinations in northeastern Ohio, and gives rise to undue preference and advantage to complainant operators' competitors located in the Pittsburgh dis-

trict on the Pittsburgh & West Virginia Railway, to their mines on said Pittsburgh & West Virginia Railway, and to their traffic in bituminous coal from their mines on said Pittsburgh & West Virginia Railway, to destinations in northeastern Ohio.

XII

That the relationship between the rates on bituminous coal from the Freeport, Pittsburgh (other than mines on the Pittsburgh & West Virginia Railway), and Connellsville districts in interstate commerce on the one hand, and from the eastern Ohio districts in intrastate commerce on the other hand, to destinations in northeastern Ohio, gives rise to undue and unreasonable prejudice against complain- [fol. 3169] ant operators, other than these located on the Pittsburgh & West Virginia Railway, to their mines and districts, other than mines on the Pittsburgh & West Virginia Railway in the Pittsburgh district, and to their traffic in interstate commerce from said mines and districts to destinations in northeastern Ohio.

XIII

That by reason of the facts stated in the foregoing paragraphs complainants, complainants' mines, the Freeport, Pittsburgh, and Connellsville districts, and complainants' traffic in bituminous coal in interstate commerce from their mines to destinations in northeastern Ohio have been subjected to the payment of rates for transportation in interstate commerce which have been, are, and so long as said rates and rate relationships continue in effect, will be, unjust and unreasonable in violation of Section 1, unduly prejudicial and disadvantageous in violation of Section 3, and unduly and unreasonably prejudicial to persons and localities in interstate commerce, in violation of Section 13 of the interstate commerce act.

Wherefore, complainants pray, (1) that defendants may be severally required to answer the charges herein; (2) that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of said act; (3) that a further order be made commanding said defendants and each

of them to establish and put in force, and apply in the future to the transportation of bituminous coal from mines in the Freeport, Pittsburgh, and Connellsville districts to destinations in northeastern Ohio, rates which shall be just and reasonable, not unduly prejudicial and disadvantageous, and not unduly prejudicial to persons and localities in interstate [fol. 3170] commerce; and (4) that such other and further order or orders may be made as the Commission may consider proper in the premises.

Dated at Pittsburgh, Pa., October 21, 1932.

Western Pennsylvania Coal Traffic Bureau et al., Empire Building, Pittsburgh, Pa., by August G. Gutheim, 712 Jackson Place, N. W., Washington, D. C., Attorney for Complainants. A. S. Boden, Empire Building, Pittsburgh, Pa., Secretary.

Duly sworn to by August G. Gutheim. Jurat omitted in printing.

[fol. 3171] EXHIBIT A

List of Complainant Coal Operators, Showing Districts Where Their Mines Are Located, Railroads on Which Their Mines Are Located, and Location of Their General Offices.

Name of Complainant Operators	District	Railroad on which mines are located	Location of General Offices
Carnegie Coal Corporation	Pittsburgh	Pennsylvania Montour	Pittsburgh, Pa.
Chartiers Creek Coal Co.	Pittsburgh	Pennsylvania	Canonsburg, Pa.
Clinton Block Coal Co.	Pittsburgh	Montour	Washington, Pa.
The Greensburg-Connellsville Coal & Coke Co.	Pittsburgh	Pennsylvania	Pittsburgh, Pa.
Hillman Coal & Coke Co.	Freeport	Pennsylvania	Pittsburgh, Pa.
	Pittsburgh	Pittsburgh & Lake Erie	
	Connellsville	Baltimore & Ohio Monongahela	
Jamison Coal Corporation	Pittsburgh	Pennsylvania	Greensburg, Pa.
Keystone Coal & Coke Co.	Pittsburgh	Pennsylvania	Greensburg, Pa.
Langeloth Coal Co.	Pittsburgh	Pennsylvania	Pittsburgh, Pa.
Lindley Coal Co.	Pittsburgh	Pennsylvania Pittsburgh & West Virginia	Pittsburgh, Pa.
McClane Mining Co.	Pittsburgh	Pennsylvania	Washington, Pa.
Ocean Coal Co.	Pittsburgh	Pennsylvania	Philadelphia, Pa.
Pittsburgh Coal Co.	Pittsburgh	Pennsylvania Baltimore & Ohio Montour Pittsburgh & Lake Erie Pittsburgh, Chartiers & Youghiogheny	Pittsburgh, Pa.
South Fayette Coal Co.	Connellsville	Monongahela	Pittsburgh, Pa.
Union Collieries Co.	Freeport	Pennsylvania Unity	Pittsburgh, Pa.
Westmoreland Coal Co.	Pittsburgh	Pennsylvania	Philadelphia, Pa.

[fol. 3172] EXHIBIT B

ALPHABETICAL LIST OF DEFENDANT CARRIERS

Akron, Canton & Youngstown Railway Company, The
Baltimore and Ohio Railroad Company, The
Bessemer and Lake Erie Railroad Company
Cleveland, Cincinnati, Chicago and St. Louis Railway Company, The
(The New York Central Railroad Company, Lessee)
Erie Railroad Company
Lorain & West Virginia Railway Company, The
Monongahela Railway Company, The
Montour Railroad Company
New York Central Railroad Company, The
New York, Chicago and St. Louis Railroad Company, The
Northern Ohio Railway Company, The
Pennsylvania Railroad Company, The
Pittsburgh and Lake Erie Railroad Company, The
Pittsburgh & West Virginia Railway Company, The
Pittsburgh, Chartiers & Youghiogheny Railway Company
Pittsburgh, Lisbon & Western Railroad Company, The
Unity Railways Company
Wheeling and Lake Erie Railway Company, The
Winfield Railroad Company, The
Youngstown and Suburban Railway Company, The

[fol. 3173] [File endorsement omitted]

[fol. 3174] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

ANSWER OF BESSEMER AND LAKE ERIE RAILROAD COMPANY—Filed Oct. 28, 1932

The Bessemer and Lake Erie Railroad Company, for answer to the Complaint, or so much thereof as it is advised it is necessary for it to answer, says:

1. It admits that it is a common carrier by railroad and subject to the provisions of the Interstate Commerce Act and amendments thereto so far as the same apply to this Defendant, and to the matters set forth in the Complaint.

2. If refers to the tariffs named in the Complaint and to all other tariffs applicable on file with this Commission for a correct statement of the rates referred to or complained of herein.

[fol. 3175] 3. It denies that it has violated or is violating any section of the aforesaid Interstate Commerce Act as alleged in the Complaint, or that anything done or omitted by it, with respect to the subject matter of Complaint, is in violation of said Act, or that it should be subjected to any adverse order, and it denies that the Complainants are entitled to the relief prayed for or to any other relief.

4. Each and every allegation in the Complaint touching anything alleged to have been done or omitted to be done by this Defendant not hereinbefore admitted or denied, is hereby specifically denied.

5. Wherefore, Defendant respectfully prays that the Complaint may be dismissed as to it.

Bessemer and Lake Erie Railroad Company, by Edward Campbell, General Freight Agent. Charles S. Belsterling, of Counsel, Room 1517, No. 71 Broadway, New York City, New York.

Dated October 26th, 1932.

[fol. 3176] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.,
Complainants,

vs.

THE NORTHERN OHIO RAILWAY COMPANY et al., Defendants

ANSWER—Filed Oct. 29, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly prejudicial and disadvantageous, and unduly and unreasonably prejudicial, and respectfully prays that the complaint in this proceeding be dismissed.

The Northern Ohio Railway Company, by J. C. Williams, Vice-President.

[fol. 3177] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Oct. 29, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly prejudicial and disadvantageous, and unduly and unreasonably prejudicial, and respectfully prays that the complaint in this proceeding be dismissed.

The Akron, Canton & Youngstown Railway Company, by J. C. Williams, Vice-President.

[fol. 3178] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.,
Complainants,

vs.

A. C. & Y. R. R. COMPANY et al., Defendants

ANSWER OF CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY (N. Y. C. R. R. Co., LESSEE), THE NEW YORK CENTRAL RAILROAD COMPANY, THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY—Filed Nov. 1, 1932

Answering the complaint in the above entitled proceeding, these defendants admit, subject to verification from published tariffs on file with this Commission, the rates and charges therein set forth, but deny that the same are unjust, unreasonable, discriminatory or unlawful in any respect, deny that complainants are entitled to any relief in the premises, and pray that the complaint may be dismissed.

Clyde Brown, H., Attorney for Above-Named Defendants, 466 Lexington Avenue, New York, N. Y.

Dated October 31, 1932.

[fol. 3179] [File endorsement omitted]

INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.,
Complainants,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY AND THE LORAIN & WEST VIRGINIA RAILWAY COMPANY—Filed Nov. 9, 1932

The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company, for their joint

answer to the complaint filed in the above entitled proceeding, say:

(1) For want of information, they can neither admit nor deny the allegations of Sections I, III, VII, VIII and XI of said complaint.

(2) They admit the allegations contained in Sections II, IV, V and VI of said complaint.

(3) They deny the allegations of Sections IX, X, XII and XIII of said complaint.

Wherefore, having fully answered, these defendants pray that this complaint may be dismissed as to them.

The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, by Andrew P. Martin, Their Attorney, 1857 Union Trust Bulding, Cleveland, Ohio. Squire, Sanders & Dempsey, 1857 Union Trust Building, Cleveland, Ohio, of Counsel.

Dated November 7, 1932.

[fol. 3180] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, et al., Defendants

ANSWER OF THE BALTIMORE AND OHIO RAILROAD COMPANY—Filed Nov. 14, 1932

I. This defendant admits the allegations contained in paragraph 1 of the complaint except so far as they relate to tariffs other than those published and filed by the Baltimore and Ohio Railroad Company, and begs leave to refer

to the Commission's files for a correct statement as to the tariffs of carriers other than the Baltimore and Ohio Railroad Company.

II. This defendant admits the allegations contained in paragraph 2 of the complaint.

III. Answering the allegations contained in paragraph 3 of the complaint, this defendant states that it is not fully advised with respect thereto, and, therefore, can neither admit nor deny such allegations, but demands proof thereof.

IV. This defendant admits the allegations contained in paragraph 4 of the complaint.

V. Answering the allegations contained in paragraph 5 of the complaint, this defendant admits that coal is produced in the districts as alleged, but as to the remaining allegations contained in said paragraph this defendant is not fully advised, and, therefore, can neither admit nor deny the allegations, but asks for due proof thereof.

VI. Answering the allegations contained in paragraph 6 of the complaint, this defendant begs leave to refer to tariffs lawfully filed with the Commission for a correct statement of the rates mentioned therein.

VII. Answering the allegations contained in paragraph 7 of the complaint, this defendant admits such allegations so far as they relate to competition to the extent only that the coals produced in the complaining districts may be interchangeable or substituted for the coals produced in the dis-
[fol. 3181] tricts complained of. As to all other allegations in said paragraph this defendant is without sufficient knowledge either to admit or deny the same.

VIII. This defendant admits the allegations contained in paragraph 8 of the complaint so far as they relate to competition, but is without knowledge as to alleged business losses and asks for strict proof thereof.

IX. This defendant denies each and every allegation contained in paragraph 9 of the complaint.

X. Answering the allegations contained in paragraph 10 of the complaint, this defendant denies that any stated relationship now exists as alleged by complainants, but ad-

mits that undue preference and advantage to complainants' competitors and undue prejudice to complainant operators exist, and avers that such undue prejudice and undue preference and advantage as may exist are the result solely of unduly low rates applicable intrastate within Ohio under orders of the Public Utilities Commission of Ohio, which are now under investigation by the Interstate Commerce Commission in I. C. C. Docket No. 25566.

XI. Answering the allegations contained in paragraph 11 of the complaint, this defendant denies that any fixed relationship exists between the rates complained of and the contemporaneous rates applicable from mines on the Pittsburgh & West Virginia Railway, but admits that the unduly low rates published by that railway result in undue prejudice and disadvantage to complainants and undue preference of producers on said railway.

XII. Answering the allegations contained in paragraph 12 of the complaint, this defendant denies that any stated relationship now exists as alleged by complainants, but admits that undue preference and advantage to complainants' competitors and undue prejudice to complainant operators exist, and avers that such undue prejudice and undue preference and advantage as may exist are the result solely of unduly low rates applicable intrastate within Ohio under orders of the Public Utilities Commission of Ohio, which are now under investigation by the Interstate Commerce Commission in I. C. C. Docket No. 25566.

XIII. Answering the allegations contained in paragraph 13 of the complaint, this defendant denies that the rates under attack are unjust or unreasonable in violation of Section 1 of the Interstate Commerce Act, and also denies the allegations with respect to violations of Sections 3 and 13 on the grounds alleged by complainants, but avers that violations of Sections 3 and 13 exist by reason of the rates permitted or required by orders of the Public Utilities Commission of Ohio. Further answering, this defendant states that the denials herein and the averment with respect to violations of Sections 3 and 13 of the Interstate Commerce Act are in accord with the allegations in the original and supplemental [fol. 3182] petitions filed by the defendants herein in I. C. C.

Docket No. 25566 and in their protest in I. & S. Docket No. 3801.

Wherefore, having answered fully, this defendant prays that the complaint be dismissed as to it so far as it is alleged that there are violations of Section 1 of the Interstate Commerce Act, or of Sections 3 and 13 of said Act on the grounds alleged, and further prays that the allegations of violations of Sections 3 and 13 of the Interstate Commerce Act, to the extent only that they are herein admitted to exist, be disposed of along with I. C. C. Docket No. 25566 and I. & S. Docket No. 3801.

The Baltimore and Ohio Railroad Company, by H. A. Cochrane, Coal Traffic Manager. Charles R. Webber, Attorney for The Baltomore and Ohio Railroad Company.

[fol. 3183] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.,
Complainants,

vs.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.,
Defendants

JOINT ANSWER OF THE PENSYLVANIA RAILROAD COMPANY, THE MONONGAHELA RAILWAY COMPANY, PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY COMPANY, THE WINFIELD RAILWAY COMPANY—Filed Nov. 15, 1932

For their answer to the complaint filed in the above entitled proceeding, these defendants respectfully state and show:

I

They are without sufficient information to admit or deny the allegations contained in this paragraph as to complainants and for answer to the allegations having reference to

tariffs refer to such of said tariffs as may be lawfully on file with the Interstate Commerce Commission.

II

They admit the allegations contained in this paragraph insofar as they refer to these defendants.

III

They are not now in position to either admit or deny the allegations of this paragraph and ask that insofar as same may be material or relevant that strict proof thereof be required.

IV

They admit the allegations contained in this paragraph.

V

They admit that coal is produced in the districts as alleged, but as to the classes or kinds of coal and the suitability for certain purposes of the coals which complainants have in mind, these defendants are not now in a position to either admit or deny, and insofar as said allegations may be material or relevant, ask that strict proof thereof be required.

VI

They admit the allegations contained in this paragraph subject to verification by tariffs on file with the Interstate Commerce Commission and the Public Utilities Commission of Ohio.

VII

These defendants admit the allegations contained in this paragraph in reference to competition, but only to the extent that the coals produced in the complaining districts may be interchangeable or substituted for the coals produced in the districts complained of. As to all other allegations in this paragraph, these defendants are without [fol. 3184] sufficient knowledge as to business which has been or may be lost, if any, to either admit or deny and ask that strict proof thereof be required.

VIII

These defendants admit the allegations contained in this paragraph as to competition but are without knowledge as

to alleged business losses and ask that strict proof thereof be required.

IX

These defendants deny severally each of the allegations contained in this paragraph.

X–XII

These defendants deny that any stated relationship now exists as alleged by complainants, but admit that undue preference and advantage to complainants' competitors and undue prejudice against complainant operators exist, but aver that such undue prejudice and disadvantage to complainant operators, or undue preference and advantage to complainants' operators' competitors as may exist is caused solely by unduly low rates applicable intrastate within Ohio as a result of orders either mandatory or permissive of the Public Utilities Commission of Ohio which are now under investigation by this Commission in Docket 25566.

XI

These defendants deny that any fixed relationship exists between the rates complained of and the contemporaneous rates applicable from mines located on the Pittsburgh & West Virginia Railway, but admit that the unduly low rates published by the Pittsburgh & West Virginia Railway gives rise to undue prejudice and disadvantage to complainants and undue preference of producers located on the said Pittsburgh & West Virginia Railway.

XIII

These defendants deny all and singularly the allegations as made as to violation of Sections 1, 3 and 13, contained in this paragraph and aver that violations of Sections 3 and 13 exist, not as alleged by complainants because of the applicable rates for interstate transportation but, on the contrary, by reason of the orders, either permissive or mandatory, of the Public Utilities Commission of Ohio, all of which denials and averments are in accordance with allegations of these defendants in the original and supplemental petitions in Docket 25566 and their protest in I. & S. Docket 3801.

Wherefore, these defendants pray that the allegations as to Section 1 in the complaint be forthwith dismissed as to them.

These defendants further pray that the allegations as to Sections 3 and 13 as modified by this answer be consolidated and disposed of in one proceeding with Docket 25566 and I. & S. Docket 3801.

Respondents above named, by J. B. McCorkle, Agent in Their Behalf. Guernsey Orcutt, of Counsel, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.

November 12, 1932.

[fol. 3185] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

AMENDED ANSWER OF CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY (THE NEW YORK CENTRAL RAILROAD COMPANY, LESSEE), THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY—Filed Dec. 3, 1932

For their answer to the complaint filed in the above entitled proceeding, the above named defendants respectfully state and show:

I

They are without sufficient information to admit or deny the allegations contained in this paragraph as to complainants and for answer to the allegations having reference to tariffs refer to such of said tariffs as may be lawfully on file with the Interstate Commerce Commission.

II

They admit the allegations contained in this paragraph insofar as they refer to these defendants.

III

They are not now in position to either admit or deny the allegations of this paragraph and ask that insofar as same may be material or relevant that strict proof thereof be required.

IV

They admit the allegations contained in this paragraph.

V

They admit that coal is produced in the districts as alleged, but as to the classes or kinds of coal and the suitability for certain purposes of the coals which complainants have in mind, these defendants are not now in a position to either admit or deny, and insofar as said allegations may be material or relevant, ask that strict proof thereof be required.

[fol. 3186]

VI

They admit the allegations contained in this paragraph subject to verification by tariffs on file with the Interstate Commerce Commission and the Public Utilities Commission of Ohio.

VII

These defendants admit the allegations contained in this paragraph in reference to competition, but only to the extent that the coals produced in the complaining districts may be interchangeable or substituted for the coals produced in the districts complained of. As to all other allegations in this paragraph these defendants are without sufficient knowledge as to business which has been or may be lost, if any, to either admit or deny and ask that strict proof thereof be required.

VIII

These defendants admit the allegations contained in this paragraph as to competition but are without knowledge as to alleged business losses and ask that strick proof thereof be required.

IX

These defendants deny severally each of the allegations contained in this paragraph.

X—XII

These defendants deny that any stated relationship now exists as alleged by complainants, but admit that undue preference and advantage to complainants' competitors and undue prejudice against complainant operators exist, but aver that such undue prejudice and disadvantage to complainant operators, or undue preference and advantage to complainants' operators, competitors as may exist is caused solely by unduly low rates applicable intrastate within Ohio as a result of orders either mandatory or permissive of the Public Utilities Commission of Ohio which are now under investigation by this Commission in Docket No. 25566.

XI.

These defendants deny that any fixed relationship exists between the rates complained of and the contemporaneous rates applicable from mines located on the Pittsburgh & West Virginia Railway, but admit that the unduly low rates published by the Pittsburgh & West Virginia Railway gives rise to undue prejudice and disadvantage to complainants and undue preference *or* producers located on the said Pittsburgh & West Virginia Railway.

XIII

These defendants deny all and singularly the allegations as made as to violation of Sections 1, 3 and 13, contained in this paragraph and aver that violations of Sections 3 and 13 exist, not as alleged by complainants because of the applicable rates for interstate transportation but, on the contrary, by reason of the orders, either permissive or mandatory, of the Public Utilities Commission of Ohio, all of which denials and averments are in accordance with allegations of these defendants in the original and supplemental petitions in Docket No. 25566 and their protest in I. & S. Docket No. 3801.

[fol. 3187] Wherefore, these defendants pray that the allegations as to Section 1 in the complaint be forthwith dismissed as to them.

These defendants further pray that the allegations as to Sections 3 and 13 as modified by this answer be consolidated

and disposed of in one proceeding with Docket No. 25566 and I. & S. Docket No. 3801.

By D. P. Connell, Attorney for Above-named Defendants, 525 La Salle Street Station, Chicago, Illinois.

Dated November 29, 1932.

[fol. 3188] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Rochester & Pittsburgh Coal Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding and for grounds of the proposed intervention says:

I

That petitioner Rochester & Pittsburgh Coal Company is a corporation existing under the laws of the Commonwealth of Pennsylvania with its principal office in Indiana, Pennsylvania.

II

That petitioner is engaged in the business of producing bituminous coal in the Counties of Indiana, Armstrong, Jefferson and Clearfield, all located in the State of Pennsylvania, and in shipping such coal in intrastate commerce.

III

That the mines of said company are located on the lines of the Baltimore & Ohio Railroad, in what is generally

known and referred to as the Reynoldsville District, and on the Pennsylvania Railroad, in what is generally known and referred to as the Indiana County District; that said [fol. 3189] districts in their entirety are more particularly described in the freight tariffs of the defendant carriers which serve said districts as originating lines; and that among such tariffs are the following:

B. & O. R. R. (B. R. & P.) tariff I. C. C. 8329, as amended.
P. R. R. tariff A. A.—I. C. C. 2035, as amended.

IV

That petitioner produces in said Reynoldsville and Indiana County Districts approximately five million tons of bituminous coal per annum, and a considerable tonnage of such coal is shipped to destinations in northeastern Ohio, substantially all of which is used for domestic purposes.

V

That the rates from the said Reynoldsville and Indiana County Districts are differentially related over the rates from the Pittsburgh District to the destination territory herein involved and this petitioner desires that such relationship shall be continued.

Wherefore said Rochester & Pittsburgh Coal Company prays leave to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted; and that if any order is issued by this Commission in this proceeding requiring a change in the rates from the Pittsburgh District to the destination territory herein involved, that such order also require that the present relationship of the Reynoldsville and Indiana County Districts over Pittsburgh, shall be maintained.

[fol. 3190] Dated at Indiana, Pennsylvania, November 28, 1932.

Rochester & Pittsburgh Coal Company, Indiana Pa.,
by A. B. McElvany, Traffic Manager.

[fol. 3191] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 22590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

and

Docket No. 25566

RATES ON BITUMINOUS COAL WITHIN THE STATE OF OHIO

PETITION FOR LEAVE TO INTERVENE

Comes now your Petitioner, The Youngstown Sheet and Tube Company, and respectfully represents that it has an interest in the matters in controversy in the above-entitled proceedings and desires to intervene in and become a party to said proceedings, and for grounds of the proposed intervention says:

I. That The Youngstown Sheet and Tube Company is a corporation engaged in the production, sale and shipping of various iron and steel products, with plants located at Youngstown, Struthers, Hubbard, Ohio, and elsewhere.

II. That in the manufacture of iron and steel products, The Youngstown Sheet and Tube Company, through its subsidiary, The Buckeye Coal Company, mines and ships coal from Nemacolin, Greene County, Pennsylvania, and Brier Hill, Fayette County, Pennsylvania, and also purchases a considerable amount of coal from mines located in the Pittsburgh, Connellsville, and other coal producing districts, on which it pays the transportation charges from the mines to its various plants, and on account of these transportation charges has an interest in the above-entitled proceedings:

Wherefore said The Youngstown Sheet and Tube Company prays leave to intervene and be treated as a party

hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

The Youngstown Sheet and Tube Company, by J. C. Argetsinger, Its General Counsel; by A. C. Graham, Its Traffic Manager.

Duly sworn to by J. C. Argetsinger. Jurat omitted in printing.

[fol. 3192] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25590

WESTERN PENNSYLVANIA COAL TRAFFIC BUREAU et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

PETITION OF THE CENTRAL PENNSYLVANIA COAL PRODUCERS' ASSOCIATION FOR LEAVE TO INTERVENE

Comes now, your petitioner, The Central Pennsylvania Coal Producers' Association, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and moves that it may be allowed to intervene in and to become a party to said proceeding and — ground for intervention avers:

I

That intervener, The Central Pennsylvania Coal Producers' Association, is a voluntary, unincorporated association of coal operators producing bituminous coal in the Central Pennsylvania region in the State of Pennsylvania, and it has its principal office in the city of Altoona, Pennsylvania.

II

That it represents producers of bituminous coal located on the following railroads and who ship bituminous coal to western destinations involved in this complaint:

1. Pennsylvania Railroad—Stations and mines in Groups 7, 8, 9 and 10 as shown on pages 22 to 32, inclusive, of

P. R. R. Tariff A.A. I. C. C. No. 2035 to destinations shown therein.

2. New York Central Railroad—Stations and mines as shown in N. Y. C. Tariff I. C. C. No. C-441 to destinations shown in N. Y. C. Tariff I. C. C. No. C-459.

3. Buffalo, Rochester & Pittsburgh Railway—Stations and mines as shown on page 5 of B. R. & P. Tariff I. C. C. No. 8329 to destinations shown therein.

[fol. 3193] III

The interest in this proceeding of The Central Pennsylvania Coal Producers' Association and the producers represented identified in Paragraph II hereof is as follows:

The mines of petitioner's members and other principals, located as aforesaid, reach a market for bituminous coal in the territory involved in this complaint, namely Ohio points.

IV

That The Central Pennsylvania Coal Producers' Association and its members, and its other principals, are vitally interested in and would be affected by any change in the existing bituminous coal freight rate structure to points involved in this proceeding.

V

Wherefore, The Central Pennsylvania Coal Producers' Association prays leave to intervene and to be treated as a party hereto, with the right to have notice of and to appear in the taking of testimony, to produce and cross examine witnesses and to be heard in person or by counsel upon brief and in the oral argument, if oral argument is granted.

The Central Pennsylvania Coal Producers' Association, by Walter A. Jones, Secretary.

Dated at Altoona, Pa., November 28, 1932.

[fol. 3194] *Duly sworn to by Walter A. Jones. Jurat omitted in printing.*

[fol. 3195] PETITIONERS' EXHIBIT No. 5

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are

true copies of the following:

Complaint filed November 16, 1932,

Answer of Bessemer & Lake Erie Railroad Company filed November 22, 1932,

Answer of The Northern Ohio Railway Company filed November 22, 1932,

Answer of The Akron, Canton & Youngstown Railway Company filed November 22, 1932,

Answer of the Erie Railroad Company filed November 25, 1932,

Joint answer of The Wheeling & Lake Erie Railway Company and The Lorain & West Virginia Railway Company filed November 26, 1932,

Joint answer of The Monongahela Railway Company, et al. filed December 2, 1932,

Answer of The Baltimore & Ohio Railroad Company filed December 5, 1932,

Intervening petition of The Guston Run Mining Company filed December 5, 1932,

Intervening petition of the Rosedale Coal Company filed December 5, 1932,

Intervening petition of the Arkwright Coal Company filed December 5, 1932,

Intervening petition of the Osage Coal Company filed December 5, 1932,

Intervening petition of the Shriver Coal Company filed December 5, 1932,

[fol. 3196] Intervening petition of the National Fuel Company filed December 5, 1932,

Intervening petition of the Davis Wilson Coal Company filed December 5, 1932, and

Intervening petition of the New Byrne Coal Company filed December 5, 1932

in Case No. 25656, H. W. Showalter, Receiver, Continental Coal Company et al. v. Akron, Canton & Youngstown Railway Company et al., the originals of which are now on file and of record in the office of this Commission.

I do further certify that the papers and documents above referred to filed prior to December 5, 1932, constitute a true copy of the record (except correspondence) in Case No. 25656, H. W. Showalter, Receiver, Continental Coal Company et al. v. Akron, Canton, & Youngstown Railway

Company et al., as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3197] [File endorsement omitted]

[fol. 3198] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY and NEW ENGLAND FUEL AND TRANSPORTATION COMPANY, Complainants,

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, The Bessemer and Lake Erie Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee); Erie Railroad Company, Lorain & West Virginia Railway Company, The Monongahela Railway Company, The Montour Railroad Company, New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Northern Ohio Railway Company, The Pennsylvania Railroad Company, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh & West Virginia Railway Company, The Pittsburgh, Chartiers & Youghiogheny Railway Company, Pittsburgh, Lisbon & Western Railroad Company, The Unity Railways Company, Wheeling and Lake Erie Railway Company, The Winfield Railroad Company, The Youngstown and Suburban Railway Company, Defendants

COMPLAINT—Filed Nov. 16, 1932

The complaint of the above named complainants respectfully shows:

[fol. 3199] I

That complainant Continental Coal Company is a corporation duly incorporated under the laws of the state of

West Virginia; that complainant New England Fuel and Transportation Company is a voluntary association organized under the laws of the Commonwealth of Massachusetts; and that both complainants are owners and operators of bituminous coal mines located on the line of The Monongahela Railway Company in northern West Virginia.

II

That defendants are common carriers engaged in the transportation of property from points in the States of West Virginia and Pennsylvania to points in the State of Ohio and from points in Ohio to points in the same state and as such are subject to the provisions of the interstate commerce act.

III

That complainants in the shipment and sale of bituminous coal from their mines located on the Monongahela Railway in northern West Virginia to and in that portion of Ohio generally east of a line drawn through Sandusky, Galion and Columbus and generally north of an east and west line drawn through Columbus, hereinafter referred to as Northeastern Ohio, compete, or attempte to compete, with mines shipping and selling similar grades of coal to and in said Northeastern Ohio from points in what are known as the Pittsburgh and Connellsville origin groups of western Pennsylvania, and the Ohio Number 8 and other origin groups of eastern Ohio.

[fol. 3200] IV

That the bituminous coal shipped by complainants from their mines on the Monongahela Railway and the coal shipped by their competitors from the districts specified in paragraph III, hereof, to Northeastern Ohio is transported by defendants named herein in interstate or intrastate commerce as the case may be.

V

That the existing rates from complainants' mines to representative points in Northeastern Ohio and the rates from mines of its competitors in the respective groups re-

ferred to in paragraph III to said points are as set forth in the Appendix hereto and according to the tariffs therein cited.

VI

That the existing rates on bituminous coal from complainants' and other mines on the Monongahela Railway in northern West Virginia to said destinations are unjust and unreasonable in violation of section one of the interstate commerce act; that the relationship between the rates on bituminous coal from said mines on the Monongahela Railway and rates from mines located in the Pittsburgh and Connellsville groups is unduly prejudicial to complainants, and other operators on the Monongahela Railway in the area indicated, and unduly preferential of their competitors in the Pittsburgh and Connellsville groups, in violation of section three of the interstate commerce act; that the relationship between the interstate rates on bituminous coal from mines on the Monongahela Railway in northern West Virginia and the intrastate rates on bituminous coal from mines in the Ohio No. 8 and other Ohio origin groups [fol. 3201] to Northeastern Ohio gives rise to undue prejudice and disadvantage to complainants and other mines on the Monongahela Railway in northern West Virginia and to traffic in bituminous coal from said mines and to undue preference and advantage to their competitors located in and shipping from said Ohio districts and the traffic in bituminous coal of such competitors, in violation of sections 3 and 13 of the interstate commerce act.

Wherefore, complainant prays (1) that defendants may be severally required to answer the charges herein, (2) that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of the act; (3) that a further order be made commanding said defendants and each of them to establish and put in force, and apply in the future to the transportation of bituminous coal from complainants' mines to destinations in northeastern Ohio rates which shall be just and reasonable, not unduly prejudicial and disadvantageous, and not unduly prejudicial to persons and localities in interstate commerce, and (4) that such

other and further order or orders may be made as the Commission may deem proper in the premises.

Dated at Pittsburgh, Pa., November 12, 1932.

[fol. 3202] Continental Coal Company, by C. W. Bushman, Its General Sales Manager, Westinghouse Building, Pittsburgh, Pa. New England Fuel and Transportation Company, by William E. McKay, Its President, 250 Stuart Street, Boston, Mass. John B. Keeler, Albert A. Mattson, Attorneys for Complainants, 750 Koppers Building, Pittsburgh, Pa.

[fols. 3203 & 3204] *Duly sworn to by C. W. Bushman and Wm. E. McKay. Jurats omitted in printing.*

[fols. 3205 & 3206] Appendix

From / To	Monongahela Ry. Mines in Northern W. Va.	Pittsburgh		Ohio #8		
		Other than P. & W. V.	P. & W. V. Ry.	Prior to 8/1/32	Present	Connellsville
Youngstown	$1.58	$1.34	$1.34	$1.34	$1.34	$1.42
Canton	1.84	1.59	1.55	1.26	1.08	1.65
Akron	1.87	1.72	1.72	1.51	1.28	1.78
Massillon	1.87	1.59	1.55	1.26	1.08	1.65
Cleveland	1.99	1.84	1.55	1.74	1.45	1.90
Lorain	1.99	1.84	1.55	1.74	1.45	1.90
Mansfield	2.13	2.03	2.03	1.78	1.78	2.09

NOTE: (1) Rates shown in first, second and sixth columns carried in P. & L. E. I. C. C. 2983, P. R. R. AA I. C. C. 2035 and B. & O. Coal & Coke Series, I. C. C. 2725.
(2) Rates in third column carried in P. & W. Va. I. C. C. 225.
(3) Rates in fourth and fifth columns carried in F. V. Davis' I. C. C. 48.
(4) Rates are stated in amounts per ton of 2000 lbs.

[fol. 3207] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

ANSWER OF BESSEMER AND LAKE ERIE RAILROAD COMPANY—Filed Nov. 22, 1932

The Bessemer and Lake Erie Railroad Company, for answer to the Complaint, or so much thereof as it is advised it is necessary for it to answer, says:

1. It admits that it is a common carrier by railroad and subject to the provisions of the Interstate Commerce Act and amendments thereto so far as the same apply to this Defendant, and to the matters set forth in the Complaint.

2. It refers to the tariffs named in the Complaint and to all other tariffs applicable on file with this Commission for a correct statement of the rates referred to or complained of herein.

[fol. 3208] 3. It denies that it has violated or is violating any section of the aforesaid Interstate Commerce Act as alleged in the Complaint, or that anything done or omitted by it, with respect to the subject matter of Complaint, is in violation of said Act, or that it should be subjected to any adverse order, and it denies that the Complainants are entitled to the relief prayed for or to any other relief.

4. Each and every allegation in the Complaint touching anything alleged to have been done or omitted to be done by this Defendant not hereinbefore admitted or denied is hereby specifically denied.

5. Wherefore, Defendant respectfully prays that the Complaint may be dismissed as to it.

Bessemer and Lake Erie Railroad Company by Edward Campbell, General Freight Agent. Charles S. Belsterling, of Counsel, Room 1517, No. 71 Broadway, New York City, New York.

Dated November 19th, 1932.

[fol. 3209] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25656

CONTINENTAL COAL COMPANY and NEW ENGLAND FUEL AND TRANSPORTATION COMPANY, Complainants,

vs.

THE NORTHERN OHIO RAILWAY COMPANY et al., Defendants

ANSWER—Filed Nov. 22, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly prejudicial and preferential, and respectfully prays that complaint in this proceeding be dismissed.

The Northern Ohio Railway Company, by J. C. Williams, Vice-President.

[fol. 3210] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25656

CONTINENTAL COAL COMPANY and NEW ENGLAND FUEL AND TRANSPORTATION COMPANY, Complainants

vs.

THE AKRON, CANTON & YOUNGTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Nov. 22, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly prejudicial and preferential, and respectfully prays that complaint in this proceeding be dismissed.

The Akron, Canton & Youngstown Railway Company, by J. C. Williams, Vice-President.

[fol. 3211] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Nov. 25, 1932

Erie Railroad Company for its answer to the complaint in this proceeding, respectfully states:

1. It believes to be true the allegations contained in Paragraph 1.

2. It admits that it is a common carrier engaged to some extent in the transportation of property by railroad from and to the points specified in the complaint.

3. It denies that its rates complained of are unreasonable, unduly prejudicial, unduly preferential or otherwise unlawful in violation of any provision of the Interstate Commerce Act.

Wherefore, Defendant prays that the complaint be dismissed.

Erie Railroad Company, by D. L. Gray, Vice-President. M. B. Pierce, W. T. Pierson, Attorneys for Defendant, Midland Bldg., Cleveland, O.

Dated November 22, 1932, Cleveland, O.

[fol. 3212] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY and THE LORAIN & WEST VIRGINIA RAILWAY COMPANY—Filed Nov. 26, 1932

The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company, for their joint answer to the complaint filed herein, say:

(1) For want of information they can neither admit nor deny the allegations contained in Sections I, III and IV of said complaint.

(2) They admit the allegations contained in Section II of said complaint.

(3) As to the allegations contained in Section V of said complaint they refer to the appropriate tariffs lawfully on file with the Interstate Commerce Commission.

(4) They deny the allegations contained in Section VI of said complaint.

Wherefore, having fully answered, these defendants pray that said complaint may be dismissed as to them.

The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, by Andrew P. Martin, Their Attorney, 1857 Union Trust Building, Cleveland, Ohio. Squire, Sanders & Dempsey, 1857 Union Trust Building, Cleveland, Ohio, of Counsel.

Dated at Cleveland, Ohio, November 25, 1932.

[fol. 3213] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to John B. Keeler, attorney for complainants, 750 Koppers Building, Pittsburgh, Pa.

Dated at Cleveland, Ohio, this 25th day of November, 1932.

Andrew P. Martin, of counsel for The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company.

[fol. 3214] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 25656

CONTINENTAL COAL COMPANY, NEW ENGLAND FUEL AND TRANSPORTATION COMPANY, Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE MONONGAHELA RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY COMPANY, THE WINFIELD RAILROAD COMPANY—Filed Dec. 2, 1932

For their answer to the complaint filed in the above entitled proceeding, these defendants respectfully state and show:

I—II—III—IV

They admit the allegations contained in these paragraphs.

V

They beg to refer to the tariffs lawfully on file with the Interstate Commerce Commission for the rates properly applicable on said shipments.

VI

They deny that the rates are unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; they deny that the relationship between the rates on bituminous coal from said mines on the Monongahela Railway and rates published by these defendants from mines located in the Pittsburgh and Connellsville groups are unduly prejudicial to complainants and other operators on the Monongahela Railway in the area indicated, and unduly preferential of their competitors in the Pittsburgh and Connellsville groups in violation of Section 3 of the Interstate Commerce Act; but it admits that the relative difference between the interstate rates on bituminous coal from mines on the Monongahela Railway in northern West Virginia and the intrastate rates on bituminous coal from mines in the Ohio No. 8 and other Ohio origin groups to northeastern Ohio published pursuant to either mandatory or permissive orders of the Ohio Public Utilities Commission gives rise to undue prejudice and disadvantage to complainants and other mines on the Monongahela Railway in northern West Virginia, and to traffic in bituminous coal from said mines, and to undue preference and advantage to their competitors located in and shipping from said Ohio districts, and the traffic in bituminous coal of such competitors in violation of Sections 3 and 13 of the Interstate Commerce Act.

Wherefore, They pray that as to it, said complaint may be hence dismissed.

Defendants above named: J. B. McCorkle, Agent in their behalf. Guernsey Orcutt, of Counsel, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.

December 1st, 1932.

[fol. 3215] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER OF THE BALTIMORE AND OHIO RAILROAD COMPANY—Filed Dec. 5, 1932

I. This defendant admits the allegations contained in paragraph 1 of the complaint.

II. Answering the allegations contained in paragraph 2 of the complaint, this defendant admits that it is a common carrier, and that, as such, it is subject to the provisions of the Interstate Commerce Act and the acts amendatory thereof and supplementary thereto.

III. This defendant admits the allegations contained in paragraphs 3 and 4 of the complaint.

IV. Answering the allegations contained in paragraph 5 of the complaint, this defendant begs leave to refer to tariffs lawfully filed with the Commission for a correct statement of the rates referred to therein and in the appendix to the complaint.

V. Answering the allegations contained in paragraph 6 of the complaint, this defendant denies that the rates are unjust and unreasonable in violation of section 1 of the Interstate Commerce Act, and also denies that the relationship between the rates on bituminous coal from mines on the Monongahela Railway and rates published by this defendant from mines located in the Pittsburgh and Connellsville groups is unduly prejudicial to complainants and other operators on the Monongahela Railway in the area indicated and unduly preferential of their competitors in the Pittsburgh and Connellsville groups in violation of section 3 of the Act. This defendant admits that the relative difference between the interstate rates on bituminous coal

from mines on the Monongahela Railway in northern West Virginia and the intrastate rates on bituminous coal from mines in the Ohio No. 8 and other Ohio origin groups to northeastern Ohio, published pursuant to either mandatory or permissive orders of the Ohio Public Utilities Commission, gives rise to undue prejudice and disadvantage to [fol. 3216] complainants and other operators of mines on the Monongahela Railway in northern West Virginia and to traffic in bituminous coal from said mines, and to undue preference and advantage to their competitors located in and shipping from said Ohio districts and the traffic in bituminous coal of such competitors in violation of sections 3 and 13 of the Interstate Commerce Act.

Wherefore, having answered fully, this defendant prays that the complaint herein be dismissed as to it.

The Baltimore and Ohio Railroad Company, by Goldes Shumate, Vice-President. Charles R. Webber, Attorney for The Baltimore and Ohio Railroad Company.

[fol. 3217] Before Interstate Commerce Commission

Docket No. 25656

Continental Coal Company et al.

v.

The Akron, Canton & Youngstown Ry. Co. et al.

Intervening Petition

Comes now your petitioner, The Guston Run Mining Co. and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of W. Va. and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of

Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3218] Wherefore said Guston Run Mining Co. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as its own the prayer for relief as contained in said complaint.

Dated at Morgantown, November 25, 1932.

The Guston Run Mining Co., by T. J. Johnson, Its President. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3219] *Duly sworn to by T. J. Johnson. Jurat omitted in printing.*

[fol. 3220] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, Rosedale Coal Co. and respectfully represents that he has an interest in the matters

in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of W. Va. and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3221] Wherefore said Rosedale Coal Co. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as its own the prayer for relief as contained in said complaint.

Dated at Morgantown, November 25, 1932.

Rosedale Coal Co., by T. J. Johnson, Its Vice President. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3222] *Duly sworn to by T. J. Johnson. Jurat omitted in printing.*

[fol. 3223] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.,

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, Arkwright Coal Company, Inc., and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

1. That petitioner is a corporation organized and existing under the laws of West Va. and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3224] Wherefore said Arkwright Coal Co. Inc. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as it own the prayer for relief as contained in said complaint.

Dated at Morgantown, W. Va., November 26th, 1932.
Arkwright Coal Co., by Stephen Arkwright, Its President. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3225] *Duly sworn to by Stephen Arkwright. Jurat omitted in printing.*

[fol. 3226] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, Osage Coal Company and respectively represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of West Virginia and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3227] Wherefore said Osage Coal Company prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as it own the prayer for relief as contained in said complaint.

Dated at Morgantown, W. Va., November 26th, 1932.

Osage Coal Co., by S. D. Brady, Jr., Its President.

John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3228] *Duly sworn to by S. D. Brady, Jr. Jurat omitted in printing.*

[fol. 3229] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, Shriver Coal Co. and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of W. Va., and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complainant as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3230] Wherefore said Shriver Coal Co. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as its own the prayer for relief as contained in said complaint.

Dated at Morgantown, November 25, 1932.

Shriver Coal Co., by Everhart Bierer, Its Pres. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3231] *Duly sworn to. Jurat omitted in printing.*

[fol. 3232] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, National Fuel Co. and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and de-

sires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of W. Va. and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3233] Wherefore said National Fuel Co. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as its own the prayer for relief as contained in said complaint.

Dated at Morgantown, W. Va., November 29th, 1932.

National Fuel Co., by T. Frank Burk, Its Vice President. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3234] *Duly sworn to by T. Frank Burk. Jurat omitted in printing.*

[fol. 3235] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, Davis Wilson Coal Co. and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of West Va., and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in the same manner and to the same extent as complainants therein.

[fol. 3236] Wherefore said Davis Wilson Coal Co. prays leave to intervene and to be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled com-

plaint and adopts as it own the player for relief as contained in said complaint.

Dated at Morgantown, W. Va., November 30, 1932.

Davis Wilson Coal Co., by R. M. Davis, Its General Manager. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3237] *Duly sworn to by R. M. Davis. Jurat omitted in printing.*

[fol. 3238] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25656

CONTINENTAL COAL COMPANY et al.

v.

THE AKRON, CANTON & YOUNGSTOWN RY. CO. et al.

INTERVENING PETITION

Comes now your petitioner, New-Byrne Coal Co. and respectfully represents that he has an interest in the matters in controversy in the above-entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That petitioner is a corporation organized and existing under the laws of West Virginia, and is engaged in the mining and/or shipping of bituminous coal from points on the Monongahela Railway in Northern West Virginia and that it ships, or attempts to ship, its coal to that portion of Ohio defined in the above-entitled complaint and therein denominated Northeastern Ohio.

II. That the circumstances surrounding the competition which it meets in said Northeastern Ohio are the same as or similar to the competition met by the complainants in the above-entitled complaint and as described in said complaint.

III. That petitioner adopts the allegations of the above-entitled complaint as its own and seeks affirmative relief in

the same manner and to the same extent as complainants therein.

[fol. 3239] Wherefore said New-Byrne Coal Co. prays leave to intervene and to be treated as a party hereto with right to have notice or and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted, and petitioner further prays for affirmative relief in the same manner and to the same extent as complainants in the above-entitled complaint and adopts as its own the prayer for relief as contained in said complaint.

Dated at Fairmont, W. Va., November 26, 1932.

New-Byrne Coal Co., by Brock Showalter, Its President. John B. Keeler, Albert A. Mattson, 750 Koppers Building, Pittsburgh, Pa., Attorneys for Petitioners.

[fol. 3240] *Duly sworn to by B. Showalter. Jurat omitted in printing.*

[fol. 3241] PETITIONERS' EXHIBIT No. 6

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Complaint filed November 16, 1932,

Answer of The Akron, Canton & Youngstown Railway Company filed November 22, 1932,

Answer of the Erie Railroad Company filed November 25, 1932,

Joint answer of The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company, filed November 26, 1932, and

Joint and several answers of The Baltimore & Ohio Railroad Company, et al., filed November 28, 1932,

in Case No. 25657, Property Owners' Committee et al. v. Akron, Canton & Youngstown Railway Company et al., the

originals of which are now on file and of record in the office of this Commission.

I do further certify that the papers and documents above referred to constitute a true copy of the record (except correspondence) in Case No. 25657, Property Owners' Committee et al v. Akron, Canton & Youngstown Railway Company et al., as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3242] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25657

PROPERTY OWNERS' COMMITTEE, Complainant,

v.

(THE) AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

COMPLAINT—Filed Nov. 16, 1932

The complaint of the above-named complainant respectfully shows:

I

That complainant, Property Owners' Committee, is a voluntary unincorporated organization, representing bituminous coal producers whose mines are located in the States of Virginia, West Virginia and Kentucky; that substantially all of said coal producers are corporations, duly organized and existing according to law, and acting through their local or district organizations, have constituted the Property Owners' Committee as a traffic and transportation committee, and have authorized said Committee to represent them in all traffic and transportation matters of a general nature, including the prosecution of complaints before the Commission, and this complaint is filed on behalf

of the said coal producers, whose mines are located in the following districts, to-wit: Pocahontas, Tug River, New River, Winding Gulf, Williamson (shown as Kenova-Thacker in railroad tariffs), Kanawha and Logan, mainly in the State of West Virginia, but partly along the State border in Virginia and Kentucky.

That all of said coal producers are engaged in shipping bituminous coal in interstate commerce and that the districts from which their coal is shipped are fully described in the freight tariffs of the defendant carriers herein that serve such districts as originating lines, and that such tariffs are the following, among others:

C. & O. Ry. Freight Tariff 100-F, I. C. C. No. 11138, as amended.

N. Y. C. R. R. Tariff No. 287-A, I. C. C. No. 269 (L. S. series) as amended.

N. & W. Ry. Tariff C. & C. No. 4806, I. C. C. No. 3140-B, as amended.

[fol. 3243]

II

That the defendants herein are those named in Appendix A, which is attached hereto and made a part of this complaint; that all such defendants are common carriers engaged in the interstate transportation of property wholly by railroad, and especially in the transportation of bituminous coal by railroad, from the mines in the districts named in Paragraph I hereof, to destinations in the State of Ohio, more particularly to destinations in northeastern Ohio, located east of the line heretofore designated by the defendants as the Sandusky-Galion line in I. & S. 774, reported in 46 I. C. C., 66.

III

That said coal producers in the districts named in Paragraph I represented by complainant, Property Owners' Committee, produce and ship both low volatile and high volatile bituminous coal; that such coals are used for many purposes, including industrial fuel, domestic or household fuel, in by-product ovens, in the making of coke and in metallurgy, and have been shipped in past years, and are now being shipped, in fairly large volume, to destinations in northeastern Ohio, east of the Sandusky-Galion line; and

that such shipments are now being transported from the districts of production named above to said destinations, in interstate commerce, by the defendants named herein.

IV

That the mines in the various Ohio producing districts, including Ohio No. 8, Cambridge, Hocking, Shawnee and Crooksville, produce annually several million tons of bituminous coal and ship a large part thereof to destinations in northeastern Ohio; that the coal so produced and shipped is high volatile coal, and is used for many of the purposes for which the coals from the complaining mines in the districts named in Paragraph I are also used; and that the coal from said Ohio districts is shipped in intrastate commerce to the destinations named above in northeastern Ohio.

V

That the rates from all of the districts named in Paragraph I to all the destinations in northeastern Ohio involved in this proceeding, of which Cleveland, Lorain, Canton and Akron are typical, are blanketed over a large area of destination, and are, uniformly, $2.39 per ton of 2,000 lbs. from the Kanawha, Logan and Williamson (Kenova-Thacker) districts, and $2.64 per ton of 2,000 lbs. from the Pocahontas, New River, Tug River and Winding Gulf districts; that while this basis of $2.39 and $2.64 is still being exacted on shipments from the districts named above, substantial reductions have been put into effect from the Ohio producing districts named, to destinations in northeastern Ohio, of which the reduction of 29¢ per ton from the Ohio No. 8 district to Cleveland and Lorain is an example, with other reductions of varying amounts from the other Ohio districts to said destinations.

[fol. 3244] VI

That the coal producers in the districts named in Paragraph I, represented by the Property Owners' Committee, complainant herein, are all in competition with each other, and with all of the coal producers in the Ohio districts named; and that because of the recent reductions in the Ohio intrastate rates from the said Ohio producing districts

to the destinations in northeastern Ohio, with no corresponding reductions in the interstate rates specified, of $2.39 and $2.64, from the districts named in Paragraph I, the producers in the latter districts have lost business and will continue to lose business so long as the said Ohio producers retain the advantage they now have by reason of the greatly broadened differences between the rates said Ohio producers now enjoy and those now exacted from the producers in the districts named in Paragraph I.

VII

That the existing differences between the rates from said Ohio producing districts to destinations in northeastern Ohio, and those from the complaining districts, which have been broadened so materially by the recent reductions in the Ohio intrastate rates, cause undue prejudice and disadvantage to the producers complaining herein, to their mines in the districts named in Paragraph I hereof, and to their interstate traffic in coal from the said mines and districts to destinations in northeastern Ohio, and cause undue preference and advantage to the Ohio producers, in the several districts named above, to their Ohio mines and to the traffic in coal from said mines and districts to destinations in northeastern Ohio.

VIII

That the existing differences in the rates on bituminous coal from the districts named in Paragraph I, which coal is transported in interstate commerce, on the one hand, and from the Ohio districts whose coal is transported in intrastate commerce, on the other hand, to destinations in northeastern Ohio, causes undue and unreasonable prejudice to the producers named in Paragraph I, to their mines and to said districts, and to their traffic in interstate commerce from said mines and districts to the northeastern Ohio destinations.

IX

That by reason of the facts stated in the foregoing paragraphs, the complaining producers, their mines, the districts set out in Paragraph I, and the traffic in bituminous coal from those districts to the destinations in northeastern

Ohio, have been and are being subjected to the payment of rates for transportation in interstate commerce, which have been, are now, and will be, unduly prejudicial and disadvantageous in violation of Section 3, and unduly and unreasonably prejudicial to persons and localities in interstate commerce, in violation of Section 13 of the Interstate Commerce Act.

[fol. 3245] Wherefore, complainant prays

(1) that defendants may be severally required to answer the charges herein;

(2) that this complaint may be set down for hearing at Columbus, Ohio, on December 5th next, together with Dockets Nos. 25566 and 25590 now assigned for hearing at that time and place;

(3) that after due hearing and investigation an order be made, commanding said defendants and each of them to cease and desist from aforesaid violations of the law;

(4) that a further order be made, commanding said defendants and each of them to establish and put in force, and apply in the future to the transportation of bituminous coal from the mines in the districts set out in Paragraph I hereof, to destinations in northeastern Ohio, rates which shall not be unduly prejudicial and disadvantageous, and not unduly prejudicial to persons and localities in interstate commerce;

(5) that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at Washington, D. C., November 11, 1932.

Property Owners' Committee, (Signed) by James D. Francis, Chairman, and by E. J. McVann, Attorney for Complainant, 907 Fifteenth St., Washington, D. C.

[fol. 3246] *Duly sworn to by James D. Francis. Jurat omitted in printing.*

APPENDIX A

Alphabetical List of Defendant Carriers:

The Akron, Canton & Youngstown Railway Company.
The Baltimore and Ohio Railroad Company.
Campbell's Creek Railroad Company.
The Chesapeake and Ohio Railway Company.
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee).
Erie Railroad Company.
The Kanawha Central Railway Company.
Kanawha, Glen Jean and Eastern Railroad Company.
Kelley's Creek and Northwestern Railroad Company.
Kelley's Creek Railroad Company.
The Lorain & West Virginia Railway Company.
The New York Central Railroad Company (Ohio Central Lines).
The New York, Chicago and St. Louis Railroad Company.
Norfolk and Western Railway Company.
The Pennsylvania Railroad Company.
The Virginian Railway Company.
The Wheeling and Lake Erie Railway Company.

[fol. 3247] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25657

PROPERTY OWNERS' COMMITTEE, Complainant,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Nov. 22, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Intertsate Commerce Commission.

This defendant denies that the rates complained of are unduly prejudicial and disadvantageous, and unduly and unreasonably prejudicial, and respectfully prays that complaint in this proceeding be dismissed.

The Akron, Canton & Youngstown Railway Company, by J. C. Williams, Vice-President.

[fol. 3248] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25657

PROPERTY OWNERS' COMMITTEE, Complainant,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Nov. 25, 1932

Erie Railroad Company for its answer to the complaint in this proceeding, respectfully states:

1. It believes to be true the allegations contained in Paragraph 1 of the complaint.

2. It admits that it is a common carrier, engaged to some extent in the transportation of property by railroad between points in the State of Ohio.

3. It denies that its rates and charges complained of are unduly prejudicial and unduly preferential and otherwise unlawful in violation of any provision of the Interstate Commerce Act.

Wherefore, Defendant prays that the complaint be dismissed.

Erie Railroad Company, by D. L. Gray, Vice-President. M. B. Pierce, W. T. Pierson, Attorneys for Defendant, Midland Building, Cleveland, O.

Dated November 23, 1932, Cleveland, O.

[fol. 3249] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25657

PROPERTY OWNERS' COMMITTEE, Complainant,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY AND THE LORAIN & WEST VIRGINIA RAILWAY COMPANY—Filed Nov. 26, 1932

The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company, for their joint answer to the complaint filed in the above entitled proceeding, say:

(1) For want of information they can neither admit nor deny the allegations contained in Sections I, III and VI of said complaint.

(2) They admit the allegations contained in Sections II, IV and V of said complaint.

(3) They deny the allegations contained in Sections VII, VIII and IX of said complaint.

Wherefore, having fully answered these defendants pray that said complaint may be dismissed as to them.

The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, by Andrew P. Martin, Their Attorney, 1857 Union Trust Building, Cleveland, Ohio. Squire, Sanders and Dempsey, 1857 Union Trust Building, Cleveland, Ohio, of Counsel.

Dated at Cleveland, Ohio, November 25, 1932.

[fol. 3250] Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to E. J.

McVann, attorney for Property Owners' Committee, 907 Fifteenth Street, Washington, D. C.

Andrew P. Martin, of counsel for The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company.

Dated at Cleveland, Ohio, this 25th day of November, 1932.

[fol. 3251] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25657

PROPERTY OWNERS' COMMITTEE

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

THE JOINT AND SEVERAL ANSWERS OF DEFENDANTS, THE BALTIMORE AND OHIO RAILROAD COMPANY, THE CHESAPEAKE AND OHIO RAILWAY COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY (THE NEW YORK CENTRAL RAILROAD COMPANY, LESSEE), ERIE RAILROAD COMPANY, THE NEW YORK CENTRAL RAILROAD COMPANY, THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, NORFOLK & WESTERN RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, THE VIRGINIAN RAILWAY COMPANY, TO THE COMPLAINT FILED IN THE ABOVE ENTITLED PROCEEDING—Filed Nov. 28, 1932

For answer to said complaint these defendants say as follows:

1. These defendants admit the allegations contained in Paragraph I.

2. These defendants admit the allegations contained in Paragraph II.

3. These defendants admit the allegations contained in Paragraph III.

4. These defendants admit the allegations contained in Paragraph IV.

5. These defendants admit the allegations contained in Paragraph V.

6. These defendants admit the allegations contained in Paragraph VI.

7. These defendants admit that undue preference and advantage to complainants' competitors and undue prejudice and disadvantage to complainants exist as a result of the differences in rates described in the complaint; these defendants deny that they are responsible therefor, and aver that such undue prejudice and disadvantage to complainants and undue preference and advantage to complainants' competitors are caused solely by orders either mandatory or permissive of the Public Utilities Commis- [fol. 3252] sion of Ohio prescribing or authorizing unduly low rates applicable intrastate in Ohio, including rates established by The Wheeling and Lake Erie Railway Company pursuant to orders of said Public Utilities Commission of Ohio, all of which rates are now under investigation by this Commission, in Docket No. 25566.

8. These defendants admit that the existing differences in rates on bituminous coal from the districts named in Paragraph I of the complaint, in comparison with the rates from said Ohio districts named in Paragraph IV of the complaint, which differences result solely from and are caused by the orders of the Public Utilities Commission of Ohio referred to in the preceding paragraph of this answer, cause undue and unreasonable prejudice to complainants and to their traffic in interstate commerce, as alleged in Paragraph VIII. These defendants again deny that they are responsible for any alleged undue or unreasonable prejudice.

9. These defendants admit the allegations contained in Paragraph IX of the complaint, except they again aver that the violations of Sections 3 and 13 of the Interstate Commerce Act alleged in that paragraph are caused, not by the interstate rates applicable from the districts in which complainants are located, but solely by the orders of the Public Utilities Commission of Ohio, as referred to in Paragraph VII of this answer.

Further answering said complaint, these defendants aver that their admissions and denials as set forth herein are in accordance with the allegations in the original and supplemental petitions in Docket No. 25566 and the protest in I. & S. Docket No. 3801.

Wherefore, these defendants pray that this complaint and their answer be consolidated with Docket No. 25566 and I. & S. Docket No. 3801 and disposed of in one proceeding.

The Baltimore and Ohio Railroad Company, The Chesapeake and Ohio Railway Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Erie Railroad Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, Norfolk and Western Railway Company, The Pennsylvania Railroad Company, The Virginian Railway Company, by Roy S. Kern, Agent.

[fol. 3253] PETITIONER'S EXHIBIT No. 7

INTERSTATE COMMERCE COMMISSION, WASHINGTON

I, George B. McGinty, Secretary of the Interstate Commerce Commission, do hereby certify that the attached are true copies of the following:

Complaint filed November 28, 1932,

Answer of Bessemer & Lake Erie Railroad Company filed December 2, 1932,

Answer of The Baltimore & Ohio Railroad Company filed December 5, 1932,

Joint answer of the Wheeling & Lake Erie Railway Company and the Lorain & West Virginia Railway Company filed December 5, 1932,

Answer of The Northern Ohio Railway Company filed December 5, 1932,

Answer of the Akron, Canton & Youngstown Railway Company filed December 5, 1932, and

Joint answer of The Monongahela Railway Company, The Pennsylvania Railroad Company, and the Pittsburgh, Chartiers & Youghiogheny Railway Company filed December 5, 1932,

in Case No. 25670, The Consolidation Coal Company, et al. v. The Akron, Canton & Youngstown Railway Company et al., the originals of which are now on file and of record in the office of this Commission.

I do further certify that the papers and documents above referred to filed prior to December 5, 1932, constitute a true copy of the record (except correspondence) in Case No. [fols. 3254 & 3255] 25670, The Consolidation Coal Company et al. v. The Akron, Canton & Youngstown Railway Company et al., as the same was on file and of record in the office of this Commission on December 4, 1932.

In witness whereof I have hereunto set my hand and affixed the Seal of said Commission this 31st day of May, A. D. 1933.

George B. McGinty, Secretary of the Interstate Commerce Commission. (Seal Interstate Commerce Commission.)

[fol. 3256] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25670

ROBERT C. HILL, FRANK R. LYON, and HOWELL FISHER, Domiciliary Receivers of The Consolidation Coal Company, a Corporation of Maryland; Robert C. Hill, Frank R. Lyon and William H. Koch, Ancillary Receivers of The Consolidation Coal Company, Within the Northern District of West Virginia; and The Consolidation Coal Company, by its Domiciliary and Ancillary Receivers Aforesaid, Complainants,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, The Baltimore and Ohio Railroad Company, Bessemer and Lake Erie Railroad Company, The Chesapeake and Ohio Railway Company, The Cleveland, Cincinnati, Chicago and St. Louis Railway Company (The New York Central Railroad Company, Lessee), Detroit, Toledo and Ironton Railroad Company, Erie Railroad Company, The Federal Valley Railroad Company, The Lorain & West Virginia Railway Company, The Monongahela Railway Company, Montour Railroad Company, The New York Central Railroad Company, The New York, Chicago and

St. Louis Railroad Company, The Northern Ohio Railway Company, The Pennsylvania Railroad Company, The Pittsburgh and Lake Erie Railroad Company, The Pittsburgh & West Virginia Railway Company, Pittsburgh, Chartiers & Youghiogheny Railway Company, The Pittsburgh, Lisbon & Western Railroad Company, Western Maryland Railway Company, The Wheeling and Lake Erie Railway Company, and The Youngstown and Suburban Railway Company, Defendants

[fol. 3257] COMPLAINT—Filed Dec. 2, 1932

The complaint of the above named complainants respectfully shows:

I.

That complainant The Consolidation Coal Company is a corporation duly organized and existing under the laws of the State of Maryland, with its principal office in New York City; that complainants Robert C. Hill, Frank R. Lyon, and Howell Fisher are the duly appointed, qualified, and acting receivers of said company under order of the District Court of the United States for the District of Maryland entered June 2, 1932; that complainants Robert C. Hill, Frank R. Lyon, and William H. Koch are the duly appointed, qualified, and acting ancillary receivers of said Company within the jurisdiction and under the order of the District Court of the United States for the Northern District of West Virginia entered June 3, 1932; and that by said order of June 2, 1932, and by orders entered in said courts on November 21, 1932, and November —, 1932, respectively, said primary or domiciliary receivers and said ancillary receivers were duly authorized to bring and prosecute this complaint. Said Company and its domiciliary and ancillary receivers aforesaid are hereinafter referred to collectively as complainants.

II

That the complainant company owns and for many years has owned bituminous coal mines and mining properties in several States and more particularly in what is herein- [fol. 3258] after called the Fairmont District in northern West Virginia; that said company for many years prior to the appointment of its receivers as aforesaid was, and the

said receivers since their appointment have been and are, engaged in operating said coal mines and in selling and shipping bituminous coal from said mines in interstate commerce; that the term Fairmont District as used in this complaint means the Fairmont, No. 1, Monongah, Short Line, Opekiska, and Clarksburg districts on The Baltimore and Ohio Railroad, the Fairmont district on the Western Maryland Railway Company, and those certain districts or groups variously known as Fairmont No. 2 district, Group C, and Group No. 3, on The Monongahela Railway Company, as more particularly described in tariffs of defendants herein; and that among such tariffs are the following:

B. & O. Coal and Coke Series, I. C. C. No. 2620, as amended;
W. M. Ry., I. C. C. No. 8241, as amended;
P. & L. E., I. C. C. No. 2983, as amended;
P. R. R., AA.—I. C. C. No. 2035, as amended.

III

That the defendants herein-above named are common carriers engaged in the interstate transportation of property wholly by railroad, and more particularly in the transportation of bituminous coal wholly by railroad from mines in the Fairmont district to destinations in the State of Ohio, and especially to destinations located in that portion of Ohio generally east of a line drawn through Sandusky, Galion, and Columbus, and generally north of an east and west line drawn through Columbus, which portion of the [fol. 3259] State of Ohio will be referred to in this complaint as northeastern Ohio.

IV

That complainants produce in said Fairmont district, as hereinbefore defined, high-volatile bituminous coal suitable for all purposes for which such coal is customarily used, and in a volume of many millions of tons annually; that for many years a very considerable tonnage of such coal has been shipped by said complainants to destinations in northeastern Ohio; and that said coal so shipped to northeastern Ohio has been usable and used for practically

all purposes, for steam and domestic purposes, for the manufacture of gas, for the manufacture of coke, for metallurgical purposes, and for railroad fuel.

V

That the coal shipped by complainants from said Fairmont district to destinations in northeastern Ohio has been and is transported in interstate commerce by defendants herein.

VI

That mines in other bituminous coal-producing districts, located in Ohio, more particularly described in F. V. Davis, Agent, tariff I. C. C. No. 48, as amended, and particularly mines in the Ohio No. 8 district, produce large quantities of bituminous coal and ship the same, or a large portion thereof, to destinations in northeastern Ohio; that the coal so produced in said Ohio districts, including the Ohio Number 8 district, are high-volatile coals, suitable in large part for the same purposes for which high-volatile coals from [fol. 3260] the Fairmont district are also suitable; and that said coals are transported from said Ohio districts, including Ohio No. 8 district, in intrastate commerce to destinations in northeastern Ohio by defendants herein.

VII

That the rates on bituminous coal from mines in said Fairmont district, from mines in said Ohio districts, and from mines on the Pittsburgh & West Virginia Railway in the Pittsburgh district as described in P. & W. Va. tariff I. C. C. No. 225, as amended, to important and typical destinations in northeastern Ohio applicable via the lines of defendants herein are, per net ton of 2,000 pounds, as shown in the table following:

[fol. 3260]

From Districts

To	Fairmont	Ohio No. 8 Prior to 8/1/32	Ohio No. 8 Effective 8/1/32	Pittsburgh (P. & W. Va. Ry. Mines Only) Prior to 10/5/32	Pittsburgh (P. & W. Va. Ry. Mines Only) Effective 10/5/32
Chagrin Falls, Ohio	199	174	145	184	155
Cleveland, Ohio	199	174	145	184	155
Elyria, Ohio	199	174	145	184	184
Lorain, Ohio	199	174	145	184	155
Mahoning, Ohio	199	174	145	184	184
Spencer, Ohio	199	174	145	184	155

Above rates apply in cents per ton of 2000 pounds and do not include Emergency Charge of 6 cents per ton of 2000 pounds.

Tariff Authorities for Rates:
Baltimore & Ohio Coal & Coke Series I. C. C. 2720.
F. V. Davis, Agent, I. C. C. No. 48 (Filed with Ohio Commission under F. V. Davis, Agent, Ohio No. 48).
Pennsylvania Railroad AA 1, C. C. No. 2035.
Pittsburgh & Lake Erie I. C. C. No. 2983.
Pittsburgh & West Virginia I. C. C. No. 225.
Western Maryland I. C. C. Nos. 7944, 7980, 7981 and 8193.

[fol. 3261]

VIII

That complainants are in competition with other operators in said Fairmont district, and with the operators in said coal-producing districts in Ohio, in the sale and shipment of coal to destinations in northeastern Ohio; that complainants, because of recent reductions in the intrastate rates on bituminous coal from mines in the Ohio districts to destinations in northeastern Ohio with no corresponding reductions in the interstate rates on bituminous coal from the Fairmont district to such destinations, have suffered, and are now suffering, material losses in business in northeastern Ohio; and that complainants will so continue to suffer material losses in business in northeastern Ohio so long as the rates and the adjustment of rates herein complained against remain in effect.

IX

That complainants are in competition with operators of mines located in the Pittsburgh district in Pennsylvania on the Pittsburgh & West Virginia Railway in the sale and shipment of coal to destinations in northeastern Ohio; that complainants, because of recent reductions in the in-

terstate rates on bituminous coal from mines in the Pittsburgh district on said Pittsburgh & West Virginia Railway to destinations in northeastern Ohio, with no corresponding reductions in the interstate rates on bituminous coal from the Fairmont district to such destinations, have suffered, and are now suffering, material losses in business in northeastern Ohio; and that complainants will continue so to suffer material losses in business in northeast- [fol. 3262] ern Ohio so long as the rates and the adjustment of rates herein complained against remain in effect.

X.

That the rates on bituminous coal from mines in the Fairmont district, from mines in the aforesaid coal-producing districts in Ohio, particularly mines in said Ohio No. 8 district, and from mines in the Freeport, Pittsburgh, and Connellsville districts in western Pennsylvania, to destinations in northeastern Ohio, form part of a rate adjustment of long standing as between the various producing districts in the Appalachian region to common destinations and markets; that in said mines in the Fairmont district, in the Ohio No. 8 district, and in the Pittsburgh and Connellsville districts, bituminous coal, in large part of substantially the same character and quality, is produced under substantially identical mining conditions from the same seam, the Pittsburgh seam, and shipped to the same destination territory in northeastern Ohio; that in said rate adjustment there has been observed for many years a system of spreads or rate relationship to the destination territory in northeastern Ohio, for instance, to Cleveland, Ohio, from mines in the Fairmont district, a spread of 25 cents over mines in the Ohio No. 8 district, of 15 cents over mines in the Pittsburgh district, and of 9 cents over mines in the Connellsville district; that by recent reductions in intrastate rates from mines in Ohio producing districts and particularly from mines in the Ohio No. 8 district, and in interstate rates from mines in the Pittsburgh district on defendant Pittsburgh & West Virginia Railway, without corresponding [fol. 3263] reductions in interstate rates from mines in the Fairmont district, to the same destination territory in northeastern Ohio, said long standing rate relationship was

disturbed and said rate spreads were materially increased as illustrated in paragraph VII herein. That to the extent of such increases in rate spread the rates from mines in the Fairmont district to the destination territory in northeastern Ohio are excessive, unjust and unreasonably high. That any increase in the spread of rates from complainants' mines over those from mines of the complainants in the proceedings hereinafter mentioned in paragraph XIV as the outgrowth of this and the other proceedings therein mentioned will result in excessive, unjust and unreasonably high rates from complainants' mines in the Fairmont district to destinations in northeastern Ohio.

XI

That the relationship of the rates on bituminous coal from the Fairmont district on the one hand, and from said Ohio districts on the other hand, to destinations in northeastern Ohio, gives rise to undue prejudice and disadvantage to complainants, to their mines in the Fairmont district, and to their traffic in bituminous coal from their said mines and district to destinations in northeastern Ohio, and gives rise to undue preference of and advantage to complainants' competitors located in said producing Ohio districts, to the mines of said competitors in said producing Ohio districts, and to the traffic of said competitors in bituminous coal from said mines and districts to destinations in northeastern Ohio.

[fol. 3264]

XII

That the relationship of the rates on bituminous coal from the Fairmont district on the one hand, and from the mines on the Pittsburgh & West Virginia Railway in the Pittsburgh district on the other hand, to destinations in northeastern Ohio, gives rise to undue prejudice and disadvantage to complainants, to their mines in the Fairmont district, and to their traffic in bituminous coal from their said mines and district to destinations in northeastern Ohio, and gives rise to undue preference of and advantage to complainants' competitors located on the Pittsburgh & West Virginia Railway in the Pittsburgh district, to the mines of said competitors there located, and to the traffic of said competitors in bituminous coal from

said mines and district to destinations in northeastern Ohio.

XIII

That the relationship between the rates on bituminous coal from the Fairmont district in interstate commerce on the one hand, and from said Ohio districts in intrastate commerce on the other hand, to destinations in northeastern Ohio, gives rise to undue and unreasonable prejudice against complainants, their mines and district, and their traffic in interstate commerce from said mines and district to destinations in northeastern Ohio.

XIV

That the Commission has instituted a proceeding known as I. & S. 3801 to inquire into the lawfulness of the rates from mines on the Pittsburgh & West Virginia Railway [fol. 3265] in the Pittsburgh district to northeastern Ohio; also a proceeding known as Docket 25566, In the Matter of Rates on Bituminous Coal Within Ohio in which the Commission entered upon an investigation to determine whether the rates on bituminous coal required by the Public Utilities Commission of Ohio to be maintained by the respondents thereto cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and also to determine what rates and charges, if any, or what maximum or minimum or maximum and minimum shall be prescribed to be charged by the respondents in said proceeding in order to remove such advantage, preference, prejudice, or discrimination, if any, as may be found to exist; that the Western Pennsylvania Coal Traffic Bureau and others have filed a complaint known as docket 25590 in which they allege that the rates from Freeport, Pittsburgh, and Connellsville districts in Pennsylvania to northeastern Ohio are unjust and unreasonable, and that those districts are unduly prejudiced by the rates from Ohio districts to northeastern Ohio; that the Property Owners' Committee has filed a complaint known as docket 25657 in which the intrastate rates from

the Ohio districts are alleged to be unduly preferential of the mine operators in those districts and unduly prejudicial to the operators in southern West Virginia, Virginia, and eastern Kentucky represented by said committee, in violation of sections 3 and 13 of the Interstate Commerce Act; that Continental Coal Company and others have filed [fol. 3266] a complaint known as docket 25656 in which they allege that the rates from mines on the Monongahela Railway in northern West Virginia to destinations in northeastern Ohio are unreasonable, and the relationship between those rates and the rates from mines in the Pittsburgh and Connellsville groups is unduly prejudicial to those complainants and unduly preferential of their competitors in the Pittsburgh and Connellsville groups; and that the relationship of the interstate rates from said mines on the Monongahela Railway and the intrastate rates from mines in Ohio groups to northeastern Ohio gives rise to undue prejudice and disadvantage to those complainants, in violation of sections 1, 3 and 13 of the Interstate Commerce Act.

If in those proceedings the Commission should find that undue preference and prejudice exist and such preference and prejudice should be removed by reducing the rates from the Freeport, Pittsburgh, and Connellsville districts, and from mines on the Monongahela Railway in northern West Virginia to northeastern Ohio without corresponding changes in rates thereto from the Fairmont district, the resulting rates would unduly prejudice these complainants to the undue preference and advantage of those districts.

All of said proceedings are assigned for hearing on Dec. 5, 1932, at Columbus, Ohio, and it is respectfully requested that this complaint also be assigned for hearing along with them.

XV

That by reason of the facts stated in the foregoing paragraphs complainants, complainants' mines, the Fairmont district, and complainants' traffic in bituminous coal in in- [fol. 3267] terstate commerce from their mines to destinations in northeastern Ohio have been subjected to the payment of rates for transportation in interstate commerce which have been, are, and so long as said rates and rate relationships continue in effect, will be, unjust and unreason-

able in violation of section 1, unduly preferential and advantageous and unduly prejudicial and disadvantageous in violation of section 3, and unduly preferential and unduly prejudicial between persons and localities in intrastate and in interstate commerce, in violation of section 13 of the Interstate Commerce Act.

Wherefore, complainants pray (1) that defendants be severally required to answer the charges herein; (2) that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violations of said act: (3) that a further order be made commanding said defendants and each of them to establish and put in force, and apply in the future to the transportation of bituminous coal from mines in the Fairmont district to destinations in northeastern Ohio, rates which shall be just and reasonable, not unduly preferential and advantageous, nor unduly prejudicial and disadvantageous, and not unduly preferential nor unduly prejudicial between persons and localities in intrastate commerce and in interstate commerce; and (4) that such other and further order or orders may be made as the Com-
[fols. 3268-3271] mission may consider proper in the premises.

Robert C. Hill, Frank R. Lyon, and Howell Fisher, domiciliary receivers of The Consolidation Coal Company, a corporation of Maryland; Robert C. Hill, Frank R. Lyon, and William H. Koch, ancillary receivers of The Consolidation Coal Company within the Northern District of West Virginia; and The Consolidation Coal Company by its domiciliary and ancillary receivers aforesaid, by Henry C. Hall, Alex. M. Bull, Attorneys for Complainants, 716 Jackson Place, N. W., Washington, D. C.

Complainants' address: 15 Broad Street, New York, N. Y.

November 25, 1932.

[fol. 3272] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25670

ROBERT C. HILL, FRANK R. LYON, and HOWELL FISHER, Domiciliary Receivers of the Consolidation Coal Company, et al.,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.

ANSWER OF BESSEMER AND LAKE ERIE RAILROAD COMPANY—Filed Dec. 2, 1932

The Bessemer and Lake Erie Railroad Company, for answer to the Complaint, or so much thereof as it is advised it is necessary for it to answer, says:

1. It admits that it is a common carrier by railroad and subject to the provisions of the Interstate Commerce Act and amendments thereto so far as the same apply to this Defendant, and to the matters set forth in the Complaint.

2. It refers to the tariffs named in the Complaint and to all other tariffs applicable on file with this Commission for a correct statement of the rates referred to or complained of herein.

[fol. 3273] 3. It denies that it has violated or is violating any section of the aforesaid Interstate Commerce Act as alleged in the Complaint, or that anything done or omitted by it, with respect to the subject matter of Complaint, is in violation of said Act, or that it should be subjected to any adverse order, and it denies that the Complainants are entitled to the relief prayed for or to any other relief.

4. Each and every allegation in the Complaint touching anything alleged to have been done or omitted to be done by this Defendant not hereinbefore admitted or denied, is hereby specifically denied.

5. Wherefore, Defendant respectfully prays that the Complaint may be dismissed as to it.

Bessemer and Lake Erie Railroad Company, by Edward Campbell, General Freight Agent. Charles S. Belsterling, of Counsel, Room 1517, No. 71 Broadway, New York City, New York.

Dated November 30, 1932.

[fol. 3274] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 25670

THE CONSOLIDATION COAL COMPANY et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER OF THE BALTIMORE AND OHIO RAILROAD COMPANY—Filed Dec. 5, 1932

I. This defendant admits each and every allegation contained in paragraph 1 of the complaint.

II. Answering the allegations contained in paragraph 2 of the complaint, this defendant admits the same so far as they relate to ownership of bituminous coal mines and mining property, the operation of such coal mines, and the selling and shipping of coal therefrom in interstate commerce. Further answering, this defendant begs leave to refer to tariffs lawfully filed with the Commission for a correct statement as to the description of the Fairmont district.

III. Answering the allegations contained in paragraph 3 of the complaint, this defendant admits that it is a common carrier, and that, as such, it is subject to the provisions of the Interstate Commerce Act and the acts amendatory thereof and supplementary thereto.

IV. Answering the allegations contained in paragraph 4 of the complaint, this defendant states that it is not fully

advised with respect thereto, and, therefore, can neither admit nor deny such allegations, but demands proof thereof.

V. This defendant admits the allegations contained in paragraph 5 of the complaint so far as shipments on its lines are concerned.

VI. Answering the allegations contained in paragraph 6 of the complaint, this defendant states that it is not fully advised with respect thereto, and, therefore, can neither admit nor deny such allegations, but demands proof thereof.

VII. Answering the allegations contained in paragraph 7 of the complaint, this defendant begs leave to refer to tariffs lawfully filed with the Commission for a correct statement of the rates mentioned therein.

[fol. 3275] VIII. Answering the allegations contained in paragraph 8 of the complaint, this defendant admits such allegations so far as they relate to competition to the extent only that the coals produced in the complaining district may be interchangeable or substituted for the coals produced in the districts complained of. As to all other allegations in said paragraph this defendant is without sufficient knowledge either to admit or deny the same.

IX. Answering the allegations contained in paragraph 9 of the complaint, this defendant states that it is not fully advised with respect thereto, and, therefore, can neither admit nor deny such allegations, but demands proof thereof.

X. Answering the allegations contained in paragraph 10 of the complaint, this defendant denies that the present rates from mines in the Fairmont district to destination territory in northern Ohio are excessive, unjust, or unreasonably high, but is not sufficiently advised as to the remaining allegations either to admit or deny the same.

XI. Answering the allegations contained in paragraphs 11, 12, and 13 of the complaint, this defendant admits that the rates now applicable from mines on the Pittsburgh & West Virginia Railway and from mines in the Ohio No. 8 district to destinations in northeastern Ohio result in undue prejudice and disadvantage to complainants and undue preference and advantage to complainants' competitors.

XII. Answering the allegations contained in paragraph 14 of the complaint, this defendant begs leave to refer to the Commission's records for a complete statement of the proceedings now before it in connection with docket No. 25566 and other cases set for hearing at Columbus, Ohio, beginning on December 5, 1932. Further answering, this defendant states that it is not fully advised with respect to the allegations respecting undue prejudice and undue preference that might result from reduction of the rates from the Freeport, Connellsville, and Pittsburgh districts and from mines on the Monongahela Railway, and, therefore, can neither admit nor deny such allegations.

XIII. Answering the allegations contained in paragraph 15 of the complaint, this defendant denies that existing rates from the Fairmont district are unjust or unreasonable in violation of section 1 of the Act, but admits that violations of sections 3 and 13 of the Act exist by reason of the rates now in effect from mines on the Pittsburgh & West Virginia Railway in the Pittsburgh district and rates from the Ohio No. 8 district now under investigation by the Interstate Commerce Commission in I. C. C. Docket No. 25566, and related cases.

Wherefore, having answered fully, this defendant prays that the complaint be dismissed as to it so far as it is [fol. 3276] alleged that there are violations of section 1 of the Interstate Commerce Act, and further prays that the allegations of violations of sections 3 and 13 of the Interstate Commerce Act, to the extent only that they are herein admitted to exist, be disposed of along with I. C. C. Docket No. 25566 and I. & S. Docket No. 3801.

The Baltimore and Ohio Railroad Company, by H. A. Cochran, Coal Traffic Manager. Charles R. Webber, Attorney for The Baltimore and Ohio Railroad Company.

[fol. 3277] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 25670

ROBERT C. HILL et al., Receivers of the Consolidation Coal Company et al., Complainants,

v.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE WHEELING AND LAKE ERIE RAILWAY COMPANY AND THE LORAIN & WEST VIRGINIA RAILWAY COMPANY—Filed Dec. 5, 1932

The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company, for their joint answer to the complaint filed herein, say:

(1) For want of information they can neither admit nor deny the allegations contained in Sections I, II, IV, V, VIII, IX and XII of said complaint.

(2) They admit the allegations contained in Sections III, VI and VII of said complaint.

(3) As to the allegations contained in Section X of said complaint they deny that the increases in the spreads of the rates from mines in the Fairmont District over the rates from mines in the Ohio No. 8 District to the destination territory in northeastern Ohio are excessive, unjust or unreasonably high. For want of information they can neither admit nor deny the allegation that any increase in the spread of rates from the complainants' mines over those from mines of the complainants in Dockets Nos. 25590, [fol. 3278] 25657 and 25656 will result in excessive, unjust or unreasonably high rates from complainants' mines in the Fairmont District to destinations in northeastern Ohio. They admit the remaining allegations of said Section X.

(4) They deny the allegations of Sections XI, XIII and XV of said complaint.

(5) They admit the allegations contained in the first paragraph of Section XIV of said complaint, but for want

of information they can neither admit nor deny the allegations contained in the second paragraph thereof.

Wherefore, having fully answered, these defendants pray that said complaint may be dismissed as to them.

The Wheeling and Lake Erie Railway Company, The Lorain & West Virginia Railway Company, by Andrew P. Martin, Their Attorney, 1857 Union Trust Building, Cleveland, Ohio. Squire, Sanders & Dempsey, 1857 Union Trust Building, Cleveland, Ohio, of Counsel.

Dated at Cleveland, Ohio, December 2, 1932.

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to Henry C. Hall, Esq., attorney for the complainants, 716 Jackson Place, N. W., Washington, D. C.

Dated at Cleveland, Ohio, this 2nd day of December, 1932.

Andrew P. Martin, of Counsel for The Wheeling and Lake Erie Railway Company and The Lorain & West Virginia Railway Company.

[fol. 3279] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25670

ROBERT C. HILL, FRANK R. LYON, and HOWELL FISHER, Domiciliary Receivers of The Consolidation Coal Company, et al., Complainant,

vs.

THE NORTHERN OHIO RAILWAY COMPANY et al., Defendants

ANSWER—Filed Dec. 5, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly preferential and prejudicial, and respectfully prays that the complaint in this proceeding be dismissed.

The Northern Ohio Railway Company, by J. C. Williams, Vice-President.

[fol. 3280] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 25670

ROBERT C. HILL, FRANK R. LYON, and HOWELL FISHER, Domiciliary Receivers of The Consolidation Coal Company et al., Complainant,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

ANSWER—Filed Dec. 5, 1932

The above named defendant for answer to the complaint in this proceeding respectfully states:

That it is a Common Carrier engaged in interstate commerce, and is subject to the Act to Regulate Commerce, and the orders of the Interstate Commerce Commission.

This defendant denies that the rates complained of are unjust and unreasonable, unduly preferential and prejudicial, and respectfully prays that the complaint in this proceeding be dismissed.

The Akron, Canton & Youngstown Railway Company, by J. C. Williams, Vice-President.

[fol. 3281] BEFORE THE INTERSTATE COMMERCE COMMISSION

No. 25670

ROBERT C. HILL, FRANK R. LYON, and HOWELL FISHER, Domiciliary Receivers of The Consolidation Coal Company, et al., Complainants,

vs.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Defendants

JOINT ANSWER OF THE MONONGAHELA RAILWAY COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, PITTSBURGH, CHARTIERS & YOUGHIOGHENY RAILWAY COMPANY

For their answer to the complaint filed in the above entitled proceeding, these defendants respectfully state and show:

I-II-III-IV-V-VI

They admit the allegations contained in these paragraphs.

VII

They beg leave to refer to the tariffs lawfully on file with the Interstate Commerce Commission for the rates properly applicable on said shipments.

VIII-IX

These defendants are without knowledge of business lost as alleged and ask that strict proof be required.

X

These defendants admit the allegations in this paragraph contained as to the existence and widening of spreads in rates over competing districts, but deny that the rates from mines in the Fairmont district are excessive, unjust and unreasonably high or that any increase in said spreads will result in excessive, unjust and unreasonably high rates from complainants' mines; and on the contrary aver that to the extent of increases in rate spread the rates from competing mines are unduly and unreasonably low.

XI

These defendants deny that the present differing rate levels complained of reflect any fixed relationship and aver that the undue prejudice and preference alleged are due solely to either mandatory or permissive orders of the Ohio Public Utilities Commission.

XII

These defendants deny that the present differing rate levels complained of reflect any fixed relationship and aver that the undue prejudice and preference alleged are due solely to orders of this Honorable Commission in I. & S. Dockets 3801 and 3833.

[fol. 3282]

XIII

These defendants deny the allegations of this paragraph for the reason that the present differences in rates do not constitute a fixed relationship, but admit that undue prejudice exists by reason solely of either mandatory or permissive orders of The Public Utilities Commission of Ohio.

XIV

Defendants admit the allegations contained in the first paragraph of this section, but are without knowledge of what this Honorable Commission may do in the future and therefore ask that strict proof be required as to the allegations in paragraph two of this section.

XV

These defendants deny the allegations that the rates were, are and will be unjust and unreasonable in violation of Section 1 of the Interstate Commerce Act; but admit that the rates are unduly preferential and advantageous and unduly prejudicial and disadvantageous in violation of Section 3, and unduly preferential and unduly prejudicial between persons and localities in intrastate and in interstate commerce in violation of Section 13 of the Act, only insofar, however, as may be caused by orders of this Honorable Commission in I. & S. Dockets 3801 and 3833 and by mandatory or permissive orders of The Public Utilities Commission of Ohio.

Wherefore, They pray that as to it, said complaint may be hence dismissed.

Defendants Above Named: J. B. McCorkle, Agent in Their Behalf. Guernsey Oreutt, of Counsel, 925 Pennsylvania Station, Pittsburgh, Pennsylvania.

December 2, 1932.

[fols. 3283–3488] (Petitioners' Exhibit No. 8 before the District Court, being the record before the Interstate Commerce Commission in its Docket No. 25885, omitted in printing because the portions of the decrees below dismissing the portions of the original bills which sought to enjoin the order in said No. 25885 were not appealed from.)

Endorsed on cover: File No. 38,471. 38,489. S. Ohio, D. C. U. S. Term No. 868. State of Ohio, Public Utilities Commission of Ohio, The Wheeling and Lake Erie Railway Company et al., appellants, vs. The United States of America, Interstate Commerce Commission, The Baltimore and Ohio Railroad Company, et al. Term No. 886. The United States of America, Interstate Commerce Commission, The Public Service Commission of the Commonwealth of Pennsylvania, et al., appellants, vs. State of Ohio, Public Utilities Commission of Ohio, The Wheeling and Lake Erie Railway Company, et al. Filed March 16, 1934. March 23, 1934. Files No. 868 O. T. 1933. 886 O. T. 1933.